



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/33885/2014

THE IMMIGRATION ACTS

Heard at Field House
On 29th June 2015

Decision and Reasons Promulgated
On 1st July 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE MANUELL
DEPUTY UPPER TRIBUNAL JUDGE MANDALIA

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MR. AFTAB AHMED

Respondent

Representation:

For the Appellant: Ms Isherwood; Senior Home Office Presenting Officer.
For the Respondent: Ms. Nasim; Counsel

DECISION AND REASONS

1. This is an appeal against a determination by First-tier Tribunal Judge B A Morris promulgated on 13th March 2015, in which she allowed an appeal against a decision made by the Secretary of State to refuse an application for leave to remain in the United Kingdom as a partner, under appendix FM of the immigration rules.

2. The appellant is the Secretary of State for the Home Department and the respondent to this appeal, is Mr. Aftab Ahmed. However for ease of reference, in the course of this determination we shall adopt the parties' status as it was before the First-tier Tribunal. We shall in this determination, refer to Mr. Ahmed as the appellant and the Secretary of State as the respondent.
3. Permission to appeal was granted by First-tier Tribunal Judge Kelly on 6th May 2015. The matter comes before us to consider whether or not the determination by First-tier Tribunal Judge Morris involved the making of a material error of law, and if so, to remake the decision.

Background

4. The appellant originally entered the United Kingdom on 5th October 2010 as a Tier 4 (General) student migrant, with entry clearance valid until 4th February 2012. A subsequent application for further leave to remain in the UK was initially refused, but later granted following a successful appeal, extending the appellant's leave to remain in the UK, until 30 June 2014. On 16th January 2014 the appellant made an application for leave to remain in the UK on the basis of his relationship with Sakhina Begum, a British Citizen. The application was refused for the reasons set out in a reasons for refusal letter dated 13th August 2014. Importantly, the application was refused upon the basis that the Secretary of State was not satisfied that paragraph EX.1(b) of the Immigration Rules were met. That is, the appellant had not established that there are insurmountable obstacles to family life with his partner continuing outside the UK.
5. In her decision of 13th August 2014, the respondent did not even remotely suggest that the appellant had failed to satisfy any of the other requirements set out in Appendix FM of the immigration rules, and there was certainly no suggestion that the appellant had failed to provide the specified evidence required under Appendix FM-SE.

6. At the hearing before First-tier Tribunal Judge Morris, the presenting officer adopted the refusal letter and accepted that if the appellant meets any other part of the immigration rules, paragraph EX does not fall to be considered.
7. Having heard all of the evidence, and that evidence having been tested in cross-examination, First-tier Tribunal Judge Morris concluded that the appellant had met the suitability requirements set out in section S-LTR, and the eligibility requirements set out in section E-LTRP. As to the financial requirements, the First-tier Tribunal Judge concluded;

“the financial requirements in this case is a gross annual income of at least £18,600. The information before me shows that by a combination of her employment at the 99p store and her self-employment in the cosmetic and clothing design business, the sponsor is in receipt of a gross annual income in excess of £18,600” [19]

8. First-tier Tribunal Judge Morris concluded;

“By reason of all the matters set out above, and taking the evidence as a whole, as I do, I find that the appellant has shown on the balance probabilities that the requirements of Section R-LTRP.1.1.(c) are met and the appeal is accordingly allowed.” [22]

The Ground of appeal

9. The respondent advances one ground. That is, First-tier Tribunal Judge Morris misdirected herself as to the law and failed to make material findings. Broadly stated, it is said that the immigration rules required not only a certain level of maintenance, but that the maintenance requirement must be evidenced in a certain way, speaking to the finances of the sponsor during a specific period.

Discussion

10. The respondents' decision of 13th August 2014 considered the application made by the appellant under the partner route by reference to the requirements of

Appendix FM, R-LTRP 1.1(d) only. Having concluded that relocating to Pakistan together, may cause a degree of hardship to the appellant and his partner, and that there was no evidence to suggest that there are any insurmountable obstacles preventing the appellant and his partner from continuing their relationship in Pakistan, the respondent concluded;

“in view of the above the Secretary of State is not satisfied that EX.1 applies in your clients case and so he does not meet the requirements of R-LTRP.1.1(d). your client application is refused under D-LTRP.1.3 and your client does not qualify for leave under the ten-year route.”

11. It is unsurprising, given that the respondents decision of 13th August 2014, did not take issue with any of the evidential requirements set out in Appendix FM-SE, that the evidence before the First-tier Tribunal in that respect was somewhat limited. However it is plain that there was before the First-tier Tribunal, a letter from the sponsor’s employer that has attached to it a statement of the terms and conditions of her employment, together with wage slips for the period between 8th November 2013 and 5th December 2014. There was also before the First-tier Tribunal, a copy of the sponsors P60 for the year ending 5th April 2014 and a letter from the sponsors Accountant confirming that that the sponsor had a combined income of £19,047 from her employment and self-employment.
12. As the issue as to whether the appellant met the evidential requirements set out in Appendix FM-SE was not contested by the respondent either in the decision that gave rise to the appeal before the First-tier Tribunal, nor at the hearing of the appeal itself, the First-tier Tribunal Judge was entitled to deal with the matter briefly. It was open to First-tier Tribunal Judge Morris to find, upon the evidence before her, that the financial requirements were met by the appellants by reference to a combination of the sponsors of employment at the 99p Store and her self-employment in the cosmetic and clothing design business.

13. That being so, it was open to First-tier Tribunal Judge Morris to find that the appellant had established, on a balance of probabilities that the requirements of Section R-LTRP.1.1.(c) were met and to allow the appeal accordingly.

Decision:

14. The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law capable of affecting the outcome of the decision.

Signed:
Deputy Upper Tribunal Judge Mandalia

Date: