



IAC-FH-CK-V1

**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: IA/35011/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 30 July 2015**

**Decision & Reasons Promulgated
On 11 August 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE HILL QC

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**MRS FEIPING ZHOU
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: Mr S Kandola, Home Office Presenting Officer

For the Respondent: Ms C Robinson, Counsel instructed by John Street Solicitors

DECISION AND REASONS

1. This is an appeal brought against a determination of First-tier Tribunal Judge Meates which was promulgated on 16 April 2015. The matter before Judge Meates on that occasion concerned a Chinese national (to whom I shall refer hereafter as the applicant) born on 20 April of 1989 who appealed the respondent's decision to refuse to vary spousal leave.
2. The chronology is significant. On 22 January 2014 the applicant made an application to the respondent to vary her leave. On 25 February the applicant was informed that her case fell to be refused because she did

not meet the minimum income threshold but she was informed that her application would be placed on hold pending a challenge that was being heard in the case of **MM**. Following the decision in that case, her application was refused on the basis that she had failed to demonstrate that she had been employed for six months prior to the date of her application.

3. At the hearing this point was argued and the First-tier Tribunal Judge determined that he was entitled to take into account additional evidence which had been submitted by the applicant. That evidence, so I am informed, indicated that she was able to show employment for a period exceeding six months but that the six month period did not all come prior to the date of her application. It is unfortunate that the judge did not deal expressly with the particular point under the Immigration Rules.
4. In Appendix FM-SE, paragraph 13, it is stated that to qualify, the person must be in salaried employment in the United Kingdom at the date of application, and to have been paid throughout the period of six months prior to the date of application.
5. It is very fairly and very properly accepted by Ms Robinson who appears for the applicant that this requirement was not met. What she urges upon me, however, is that there was an implied variation of the application and that time did not begin to run until the additional documentation was submitted. In all those circumstances, she says, the applicant came within the requirement stipulated at paragraph 13.
6. To make good that submission she seeks to rely on the decision of **Secretary of State for the Home Department v Qureshi [2011] UKUT 412 (IAC)**. That case concerned a different situation, namely a student application. Subsequent to making the application, the student decided to embark upon a course different from that specified in the original application and accordingly it was treated as a variation. For the purposes of the Immigration Rule, the material date was taken to be that variation.
7. Whilst I can see the logic of that decision, it has no application in this case because there was no variation in relation to the application pursued by the applicant. She was invited to plug a gap in the financial documentation and rather than turning her mind to the six months antecedent to the date of her application, she instead produced documentation referring to a later period which was not caught by the strict provisions of paragraph 13. Put shortly, she sought to plug the wrong gap.
8. I am asked to consider this appeal on the basis that this error of law in the First-tier determination (which is clearly established) was not material and that I can consider the matter in relation to a later point of time. I cannot accept that submission because the Upper Tribunal is similarly bound by the provisions of paragraph 13 of Appendix FM-SE. In examining this

matter, I can only look at the six months immediately antecedent to the date of application.

9. It is said that if this were a 'near miss' for the purposes of the Immigration Rules, it is appropriate to look at Article 8. That was not explored before the First-tier Tribunal Judge nor is it something which can be opened at this stage.
10. The applicant is entitled to make a further application should she wish, and that would be determined on the merits based on the material placed before the Secretary of State. But this appeal must be allowed for the reasons I have already given. The decision of First-tier Tribunal Judge Meates promulgated on 16 April 2015 will accordingly be set aside and the decision of the Secretary of State reinstated.

Notice of Decision

The appeal is allowed.

The decision of First-tier Tribunal Judge Meates promulgated on 16 April 2015 is set aside and the decision of the Secretary of State reinstated.

No anonymity direction is made.

Signed *Mark Hill*

Date 4 August 2015

Deputy Upper Tribunal Judge Hill QC