



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: OA/00766/2014

THE IMMIGRATION ACTS

Heard at Field House
On 17 September 2015

Decision and Reasons Promulgated
On 18 September 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE GRIMES

Between

ENTRY CLEARANCE OFFICER ISLAMABAD

Appellant

and

SAQIB ANWAR

Respondent

Representation:

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

For the Respondent: no appearance

DETERMINATION AND REASONS

1. Although this is an appeal by the Secretary of State I will refer to the parties as they were in the First-tier Tribunal.
2. The appellant, a citizen of Pakistan, appealed to the First-tier Tribunal against a decision of the Entry Clearance Officer (ECO) dated 24 July 2013 (as amended by a further decision dated 2 September 2014) to refuse his application for entry clearance to the UK as a spouse. First-tier Tribunal Judge Joshi allowed the appeal. The Secretary of State appeals with permission to this Tribunal.

3. There was no appearance by or on behalf of the appellant at the hearing before me. I was satisfied that the appellant and the sponsor had been notified of the hearing and I considered that it was in the interests of justice to proceed with the hearing despite the absence of the appellant and I did so in accordance with Rule 38 of the Tribunal Procedure (Upper Tribunal) Rules 2008. I heard submissions from Mr Whitwell.
4. The issue in this appeal is narrow as there is only one ground of refusal identified in the second refusal notice. This is almost identical to the reason identified in the first refusal notice in relation to the financial requirements of the Immigration Rules. This is that the appellant had failed to provide one of the pieces of specified evidence required by Appendix FM of the Immigration Rules, ie personal bank statements for the 6 month period prior to the application showing that the salary detailed in the wage slips for the same period has been paid into the sponsor's account. The ECO considered that the bank statements provided did not show that the sponsor had deposited her full net earnings into her account on a weekly basis and decided that the appellant had not therefore provided all of the specified evidence and did not meet the financial requirements.
5. At the hearing in the First-tier Tribunal the appellant's representative submitted that in order to comply with the Rules the sponsor had to show 6 months bank statements prior to the date of *decision*. Whilst the Judge correctly states at paragraph 19 that the relevant period is 6 months before the date of the application, the evidence he went on to consider at paragraph 21 relates to the period between March and September 2014 which was before the second decision. The Judge went on to conclude that the appellant had shown that the sponsor earned £11,227.82 net in the six months prior to the respondent's *decision* and that the appellant met the requirements of the Rules.
6. The respondent's grounds of appeal to the Upper Tribunal contend that the First-tier Tribunal Judge erred in considering bank statements which post-date the application.

Error of law

7. As a starting point I note that Appendix FM-SE requires that specified evidence must be provided with the application. It is obvious therefore that evidence relating to the date of the decision cannot be relevant in this context. Further, paragraph 2 of Appendix FM-SE sets out the evidence to be provided in relation to salaried employment in the UK and requires, inter alia, the provision of payslips covering the period of 6 months prior to the date of application and personal banks statements corresponding to the same period showing the salary being paid into an account in the sponsor's name.
8. This appeal was somewhat complicated by the fact that the respondent issued two decision notices. However they are in essence the same in relation to the core financial issue. I further note that the appellant seems to have lodged the appeal in December 2013 some five months after the first decision. However no issue was taken before the First-tier Tribunal or before me in relation to jurisdiction.
9. In light of the provisions of the Rules the First-tier Tribunal Judge erred in that he misdirected himself in law in considering the bank accounts for the period before the

decision rather than the period before the application. In light of the nature of the error which goes to the heart of the only issue in this appeal I set aside the decision of the First-tier Tribunal.

Remaking the decision

10. In remaking the decision I firstly take into account the correspondence sent by the sponsor to the Upper Tribunal in advance of the hearing. In her letter dated 27 August 2015 the sponsor says that she is no longer sponsoring the appellant. This obviously raises new issues about the genuineness of the relationship and the intentions of the parties to live together.
11. As stated above the sole issue in the second refusal notice is whether the appellant has demonstrated that he met the evidential requirements in terms of the evidence of the lodgement of the appellant's wages in her bank account. Mr Whitwell provided a copy of the statement of Immigration Rules dated 13 March 2014 (HC1138) referred to by the ECO in the second decision. Paragraph 204 of HC1138 introduced an amendment to Appendix FM-SE in relation to all applications decided on or after 6 April 2014 as to the treatment deposits of cash income.
12. I have considered the documentary evidence in the respondent's bundle. It is unclear what documents were submitted with the application and whether any were submitted with the appeal. In any event the respondent's bundle contains statements relating to three Barclays Bank statements in the sponsor's name. These statements cover the period from 4 August 2012 until 28 March 2013. None of these statements show deposits consistent with the wage slips over the period covered. Further, the bank statements do not cover the period from 28 March until the application was lodged on 14 April 2013.
13. There are further Barclays Bank statements in the appellant's bundle but these relate to periods of time long before and after the relevant six month period.
14. On the basis of the evidence before me I cannot be satisfied that the appellant met the requirements of the Rules at the date of the decision appealed against. In these circumstances I dismiss the appeal.

Conclusion:

The making of the decision of the First-tier Tribunal did involve the making of an error on point of law.

I set the decision aside and remake it by dismissing the appeal.

Signed

Date: 17 September 2015

A Grimes
Deputy Judge of the Upper Tribunal