



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

Appeal Number: OA/01685/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 15th May 2015**

**Decision & Reasons Promulgated
On 28th May 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE D N HARRIS

Between

**MRS MUZDALIFA FAROUK MOHAMMED
(ANONYMITY ORDER NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Wainwright, Counsel

For the Respondent: Mr I Jarvis, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a citizen of Tanzania born on 2nd November 1991. The Appellant had applied for entry clearance as a partner under Appendix FM of the Immigration Rules and her application was refused by the Entry Clearance Officer on 11th December 2013. The Appellant appealed and the appeal came before Judge of the First-tier Tribunal Swaniker on 24th November 2014. In a determination promulgated on 7th January 2015 the Appellant's appeal was allowed under the Immigration Rules. The Secretary of State on 13th January 2015 lodged Grounds of Appeal to the

Upper Tribunal. The issue was whether or not the income threshold under the Immigration Rules was met and the Secretary of State contended that the specified evidence is mandatory and that it had not been open to the judge to use her own discretion or to accept the Sponsor's oral evidence in lieu of the specified evidence.

2. On 17th February 2015 Judge of the First-tier Tribunal Frankish granted permission to appeal. Judge Frankish noted that net cash salary payments at a bank may be grossed up to calculate income where this matches the gross on a pay slip but there was no finding of any such tally between the two and therefore there was an arguable error of law.
3. The matter thereafter came before me on 10th April 2015 to determine whether or not there was a material error of law in the decision of the First-tier Tribunal Judge. The parties' legal representatives at that hearing agreed the issue was straightforward, namely that the Appellant had to show that the income threshold under the Immigration Rules was met. It was submitted that the judge did not engage with Appendix FM-SE regarding the income threshold of £18,600. I found the Rule was clear and that it was necessary in order to meet the requirements of Appendix FM-SE A1(1)(n) that if wages were received in cash the full amount had to be paid into a Sponsor's bank account in order for the full amount to be counted. I found that the gross amount of any cash may be counted where a person's specified bank statements showed that the net amount which related to the gross amount shown on their pay slips otherwise only the net amount on the specified bank statements may be counted. I acknowledge that the judge had used discretion and accepted oral testimony in lieu of the specified evidence to effectively make that leap of faith but in such circumstances I found that there was a material error of law.
4. The representatives agreed that the correct approach was for a schedule to be produced showing a paper trail of payments made into bank accounts during the relevant period and providing that paper trail showed that the amount satisfied the Rule then the Appellant would succeed. On that basis I gave directions and adjourned the matter to be reheard on the fixed date of 15th May 2015.
5. It is on that basis that the appeal now comes back before me. The Appellant appears by her instructed Counsel Mr Wainwright and again by her partner and Sponsor Mr Suleiman Ali Hamed. In support of their application there is also now produced a bundle of documents running to some 34 pages all of which I have given due consideration to. In this instance the Secretary of State appears by her Home Office Presenting Officer Mr Jarvis.

Submissions/Discussions

6. It is agreed by the legal representatives the relevant Immigration Rule the Appellant needs to meet is Appendix FM(n). This Rule stipulates:
 - “(n) The gross amount of any cash income may be counted where the person's specified bank statements show the net amount which relates to the gross amount shown on their payslips (or in the relevant specified evidence

provided in addition to the specified bank statements in relation to non-employment income). Otherwise, only the net amount shown on the specified bank statements may be counted”.

7. It is agreed between the legal representatives, and I confirm their assessment therein, that consequently providing the Sponsor can show that he meets the above Rule and for at least six months prior to making his application received £18,600 from his two employments then he will meet the Rules.
8. Mr Wainwright starts by taking me to page 7 of the supplementary bundle. That sets out the pay slip details of the Sponsor’s two employments, the first from Illution and the second from City Facilities. He indicates that the problem arises with regard to the payments from Illution in that those payments were paid by cash. The payments from City Facilities are paid by BACS directly into the Appellant’s bank account and they are reflected on pages 2 to 18 of his bank statements. Further the payments made therein correspond with the pay slips which are produced at pages 24 to 33 of the new bundle.
9. He therefore submits that the issue relates to the funds received from Illution during the relevant period. He takes me to the pay slips from Illution which are to be found at pages 21 to 23 and cross-references from those pay slips entries made into the Sponsor’s bank account. Mr Wainwright acknowledges that the payments to the bank account do not exactly equate to the Sponsor’s net earnings from Illution in that he has not paid all monies in having kept a small amount for his day-to-day requirements. He acknowledges that had these payments been made directly into the bank account then the issue before the Tribunal may well not have emerged. He further in addition in support of the Sponsor’s/Appellant’s position refers me firstly to the annual tax summary of Mr Hamed from HM Revenue & Customs which reflects for the tax year 2013 to 2014 (i.e. the relevant year) that the Sponsor’s income before tax was £25,963.04 gross and £21,954.90 net. On any figure he submits that that is substantial evidence towards showing that the Sponsor’s income exceeds the minimum threshold. He further refers me back to the original bundle and the evidence produced from the Sponsor’s accountants and submits that these two pieces of evidence together provide strong weight in support of the Sponsor’s confirmation that he meets the minimum income requirements.
10. Mr Jarvis points out that applying the Rules the Secretary of State will only look back for a period of six months therefore the income received in March 2013 by the Sponsor would not be taken into account. However, Mr Jarvis indicates that on behalf of the Secretary of State and that having seen the evidence he accepts the Sponsor did have sufficient income to meet the minimum requirements of the Immigration Rules at the time he made his application based on his income both from Illution and City Facilities.

Findings

11. The burden of proof is the civil burden of proof on the balance of probabilities. As has been said previously in the course of this matter complications arise solely

because the Sponsor Mr Hamed receives part of his income in cash but whilst the gross amount of any cash income can be counted this only takes place where a person's specified bank statements show the net amount which relates to the gross amount shown on their pay slips. In the alternative an applicant is forced to rely only on the net amount of the specified bank statements as countable income.

12. The Sponsor has gone to considerable lengths to explain his financial circumstances and his instructing solicitor and Counsel have done an excellent job in being able to cross-reference item by item the relevant payments. Whilst the payment for 31st March 2013 would be excluded looking at the whole matter overall cross-referencing every payment that has been made Mr Jarvis concedes that the paper trail shows that the Sponsor meets the terms of the Immigration Rules and I endorse that view. In such circumstances this is an Appellant that meets the terms of the Immigration Rules and the Appellant's appeal is allowed.

Notice of Decision

The appeal is allowed under the Immigration Rules.

No anonymity order is made.

Signed

Date

Deputy Upper Tribunal Judge D N Harris

TO THE RESPONDENT **FEE AWARD**

No application made for a fee award and none is made.

Signed

Date

Deputy Upper Tribunal Judge D N Harris