



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: OA/01800/2015

THE IMMIGRATION ACTS

Heard at Field House
On 12th November 2015

Decision & Reasons Promulgated
On 7th December 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE GRIMES

Between

ENTRY CLEARANCE OFFICER - ISLAMABAD

Appellant

and

MRS HINA ABBAS
(ANONYMITY DIRECTION NOT MADE)

Respondent

Representation:

For the Appellant: Ms J Isherwood, Home Office Presenting Officer
For the Respondent: Mr J Worboys, Counsel instructed by ATM Law Solicitors

DECISION AND REASONS

1. Although this is an appeal by the Entry Clearance officer (ECO) I refer to the parties as they were in the First-tier Tribunal.
2. The Appellant, a national of Pakistan, appealed to the First-tier Tribunal against a decision of the ECO dated 20th December 2014 to refuse her application for entry clearance under Appendix FM of the Immigration Rules as the partner of Mr Mohammed Abbas. Judge of the First-tier Tribunal Suffield-Thompson allowed the

Appellant's appeal in a decision dated 14th June 2015. The Secretary of State appeals with permission against that decision.

3. The background to this appeal is that the ECO refused the Appellant's application on the basis that the Sponsor did not meet the financial requirements as set out in paragraph E-ECP.3.3. of Appendix FM of the Immigration Rules. According to the ECO the Appellant provided documents to show that the Sponsor is self-employed in two occupations, in business as AA Chicken & Pizza and as a butcher. The ECO considered the documentation but noted that the Sponsor's bank statements do not show the claimed turnover of £42,627 as detailed in the HMRC tax return and the accounts supplied. The ECO considered the letter from the Sponsor's accountants which details a salary income as a butcher amounting to £13,530 from DHM London. It is stated that the tax return and the accounts detail costs and overheads from this employment. However, the ECO considered that the documents submitted appear to show that the Sponsor is actually employed by this company and is not therefore a self-employed butcher. The ECO was not therefore satisfied that the accounts or the submission to HMRC is a true reflection of the Sponsor's self-employment income. Furthermore, the ECO noted that there are entries in the Sponsor's bank account from the Student Loans Company which suggest that the Sponsor is actually a student and caused the ECO to doubt that the Sponsor is employed as claimed. The ECO refused the application under paragraph EC-P.1.1.(d) of Appendix FM of the Immigration Rules.
4. The First-tier Tribunal Judge considered the appeal on the papers. The judge noted that the Appellant and the Sponsor married on 10th June 2013 and that they now have a baby and that the Sponsor and Appellant are applying for a British passport for the baby as the child is entitled to British nationality through the Sponsor. The judge noted that the Sponsor in this case claims to be self-employed and to have two businesses in the UK, a pizza takeaway and a butcher's shop. The judge also noted that the Appellant claims that the Sponsor undertook a part-time business course in 2014 in order to enhance his business skills which would be of benefit to his businesses and that he was still running his businesses whilst he undertook this course.
5. The judge identified the two main areas of dispute as being whether the Sponsor is employed or self-employed and whether the Sponsor has been self-employed for the entire requisite period or whether he gave up work in December 2013 to become a student. The judge considered all of the evidence before the ECO including the Sponsor's bank statements, his self-assessment tax returns, HMRC SA302 form, a letter from the Sponsor's accountant, business accounts, national insurance bill payment and invoices.
6. The judge concluded at paragraph 15 that the ECO had ample documentation before her to assess that the Sponsor is self-employed. The judge concluded that the fact that the bank statement shows pages called "wages" is immaterial on the basis that most self-employed people pay themselves a salary or wage from their own business and it is logical that such identification would be made for the payments going into their accounts. The judge concluded that it is clear from the HMRC SA302 that any

income was self-employed income and that the accountants' letter details a salary income from the butcher's business but states clearly that it is self-employed income.

7. The judge considered the documents and also considered the ECO's guidance (Annex FM Section FM 1.7 paragraph 9.3.7) which states that self-employed income can be cash in hand but it would be expected that the person's business or personal bank statements would fully reflect all gross pre-tax cash income and that flexibility may only be applied where the decision maker is satisfied that the cash income relied upon is fully evidenced by the tax returns and accounts information.
8. The judge went on to find that the guidance, which had been specifically referred to in the Appellant's application and was therefore before the ECO, showed that the ECO did not consider this policy. The judge considered that the business accounts, the HMRC form and the self-assessment tax return fully evidenced the income [20]. The judge found that the Sponsor was self-employed, not employed and that the Respondent had erred in not finding this to be the case.
9. The judge considered the whether the Sponsor was a student from December 2013 and concluded that there was no evidence on which the ECO could conclude that student loan payments cast doubt on the credibility of the Appellant's claim that the Sponsor was running two businesses. The judge found that the Sponsor was self-employed for the period as required and allowed the appeal.
10. The ECO's Grounds of Appeal to the Upper Tribunal contend that the First-tier Tribunal Judge did not carry out an assessment of the Appellant's income or make findings as to how this relates to the minimum income requirement of Appendix FM and Appendix FM-SE and that a fundamental aspect of the claim had not therefore been considered. The grounds contend that the Tribunal failed to make an assessment of income for the relevant period which was twelve months prior to the date of application.
11. At the hearing before me Mr Worboys clarified that as the Sponsor is self-employed and not employed and that the relevant period is in fact the last full financial year, which is 2013/14, not a period of twelve months prior to the application as suggested in the grounds. Ms Isherwood did not dispute this submission and I accept that this is the relevant period.
12. Ms Isherwood submitted that the judge did make a material error because the judge did not assess how the Appellant met the Rules. She submitted that the judge had not properly considered the Secretary of State's position. She submitted that the bank statements do not correspond with the invoices and that the judge considered the policy, 9.3.7, but did not resolve the matter. She submitted that the point about the student loan is that after that date the income stopped. The refusal did not say that the Sponsor could not be a student and be self-employed but said that the ECO was not satisfied that the Sponsor was self-employed or earning income after that date. She submitted that at paragraph 21 the judge fails to explain how the document explains itself. She submitted that the judge did not resolve the issue about the claimed income.

13. Mr Worboys submitted that the issue in relation to turnover was misconceived. He submitted that the judge had considered all of the evidence as set out at paragraph 13. He submitted that at paragraph 20 the judge found that the income was fully evidenced. He submitted that any discrepancy in relation to cash income was captured by the Home Office policy and that it was clear that the judge had considered this policy. He submitted that all of the provisions of the relevant Rules had been met. Paragraph 12 of the skeleton argument contained a statement of the relevant provisions of Appendix FM and he submitted that all of the documents set out therein had been in fact provided. In these circumstances the judge was not required to make any further findings than those she did.
14. He submitted that page 54 of the Appellant's bundle shows an invoice issued on 30th March 2014 which was after the date it was alleged that the Appellant became a student and that there is nothing to preclude the Appellant studying and being self-employed. He said that the judge was right to consider that it was not proper for the ECO to draw that conclusion from the payment of the student loans. He said that even if the judge had made any misdirection there is no material error of law because all documents were provided and relied upon. He submitted that the judge set out all of the relevant principles, discussed the relevant evidence, considered the position of both parties, considered all of the documents on the basis of the evidence, assessed the Rules and addressed the issues between the parties.
15. In response Ms Isherwood submitted that there had not been a proper assessment of the evidence and the Rules. She submitted that the judge had not applied the policy that she set out at paragraph 19 and submitted that the reasoning was not on the evidence.

Error of Law

16. I have considered all of the evidence and the submissions. I am satisfied that the judge made no material error of law in her consideration of this appeal. I consider that when the appeal is read as a whole it is clear that the judge assessed all of the evidence which was before the ECO. The judge set out at paragraph 19 that the ECO's guidance allowed for consideration of cash in hand if the income is fully evidenced by the relevant tax returns and the accounts information. In my view the finding in paragraph 20 that the income was fully evidenced was open to the judge on the basis of all the evidence before her. I am satisfied that it is implicit in the determination that the judge found that the Sponsor was employed throughout the relevant period and that this means that the Appellant has demonstrated that the financial requirements of Appendix FM have been met. This amounts to a finding that the relevant provisions of the Immigration Rules were met at the time of the decision.
17. In these circumstances the judge made no material error of law.

Notice of Decision

The judge made no material error of law in her consideration of this appeal. The decision of the First-tier Tribunal shall stand.

No anonymity direction is made.

Signed

Date: 30th November 2015

Deputy Upper Tribunal Judge Grimes

TO THE RESPONDENT
FEE AWARD

As I have allowed the appeal and because a fee has been paid or is payable, I maintain the fee award made by the First-tier Tribunal.

Signed

Date: 30th November 2015

Deputy Upper Tribunal Judge Grimes