



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Numbers: OA/03522/2014  
OA/03523/2014  
OA/03524/2014

**THE IMMIGRATION ACTS**

Heard at Field House  
On 16 April 2015

Determination Promulgated  
On 20 April 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE APPEYARD

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MRS SHABANA SHOUKAT - FIRST RESPONDENT  
MR DAWOOD MALIK - SECOND RESPONDENT  
MISS TURAB MALIK - THRID RESPONDENT  
(ANONYMITY ORDER NOT MADE)

Respondents

**Representation:**

For the Appellant: Mr E Tufan, Home Office Presenting Officer  
For the Respondents: Mr E K Mahmood, Legal representative

**DECISION AND REASONS**

1. The appellant in this case is the Secretary of State for the Home Department. However, for the sake of clarity, I shall use the titles by which the parties were known before the First-tier Tribunal, with the Secretary of State referred to as "the

respondent". Accordingly Mrs Shoukat, Mr Malik and Miss Malik will be referred to as the appellants.

2. No order for anonymity has been made hitherto in these proceedings and no application was made before me today. There is no need for such an order.
3. The appellants are citizens of Pakistan, born, respectively on 18 August 1979, 14 May 2009 and 9 September 2007. The first appellant is the mother of the second and third appellants.
4. They applied on 28 September 2013 for entry clearance. The first appellant's application was under Appendix FM of the Immigration Rules HC 395 (as amended). Those applications were subsequently refused, although, for reasons not entirely clear to the Judge of the First-tier Tribunal, there are two refusal decisions dated 13 February 2014 and then 20 October 2014. The basis for each of those decisions is the same and the appeal before the First-tier Tribunal was therefore against them both.
5. The appellants' appeal was heard by Judge of the First-tier Tribunal Youngerwood who in a decision promulgated on 14 January 2015 allowed the appellants' appeals. The respondent sought permission to appeal relying on Section 13 of Appendix FM-SE on the basis that the judge had failed to have adequate regard to the requirements thereof with particular reference to Section 13(b)(ii).
6. That application was considered and granted by Judge of the First-tier Tribunal Landes who gave her reasons for so doing on 20 February 2015. They are :-
  - "1. This is an in-time application by the respondent for permission to appeal against the decision of Judge of the First-tier Tribunal Youngerwood promulgated on 14 January 2015 allowing the appeal of the appellants, a wife and two children, against the entry clearance officer's decision to refuse them entry clearance.
  2. The grounds submit that the judge erred in his approach to Appendix FM-SE section 13(b), the applicable section, as the sponsor had been in salaried employment for less than six months at the date of the application and the actual gross salary had to be considered rather than an extrapolation and self-employed earnings cannot be taken into account as specified documents were not provided.
  3. The sponsor had been self-employed before he became employed. He only became employed in the month before the application. Although the judge accepted at [16] the amount of the earnings from self-employment which was above the appendix FM requirement, he also found that the specified evidence in relation to self-employment had not been provided [14]. The judge however extrapolated from the two pay slips provided to find that the yearly salary would satisfy the rules [15].

4. It is arguable that the “gross annual salary from employment as at the date of application” was only that on the two pay slips as argued in the grounds. Of course, income from self-employment can be considered as well but then the specified documents need to be provided and the judge found they had not been. Even if contrary to what is argued in the grounds “gross annual salary from employment as at the date of application” permits extrapolation, the requirements of section 15 of Appendix FM-SE must also be met (see the end of 13(b)) which means that it must also be shown (by providing the specified documents) that the leave required by Appendix FM-SE has been met in the 12 months prior to the application. As the specified documents relating to self-employment were not provided, it is arguable that on any construction of section 13 of Appendix FM-SE the judge erred in law.”
7. Thus the appeals came before me today. There was some initial confusion as the respondent at paragraph 3 of a letter to the Tribunal dated 2 March 2015, pursuant to Rule 24, makes reference to the appellants having cross-appealed. Mr Mahmood was somewhat surprised by this. Moreover he indicated to me that he had no material before him regarding the permission to appeal process beyond a notice of hearing for today. I therefore adjourned for 30 minutes having provided him with the appropriate documentation for consideration and to enable both representatives to discuss the position.
8. Upon resuming I was informed by Mr Tufan that he withdrew any aspect of the appeals before me beyond the respondent’s challenge to the judge’s decision allowing the appellants’ appeals. Mr Mahmood confirmed that no challenge had been made by the appellants to that decision. I therefore proceeded to deal with the appeals on the basis of the grant of permission of Judge Landes dated 20 February 2015.
9. It is helpful if I set out Sections 13 and 15 of Appendix FM-SE. They state:-
  - “13. Based on evidence that meets the requirements of this Appendix, and can be taken into account with reference to the applicable provisions of Appendix FM, gross annual income under paragraphs E-ECP.3.1., E-LTRP.3.1., E-ECC.2.1. and E-LTRC.2.1. will be calculated in the following ways:
    - (a) Where the person is in salaried employment in the UK at the date of application, has been employed by their current employer for at least 6 months and has been paid throughout the period of 6 months prior to the date of application at a level of gross annual salary which equals or exceeds the level relied upon in paragraph 13(a)(i), their gross annual income will be (where paragraph 13(b) does not apply) the total of:
      - (i) The level of gross annual salary relied upon in the application;

- (ii) The gross amount of any specified non-employment income (other than pension income) received by them or their partner in the 12 months prior to the date of application; and
  - (iii) The gross annual income from a UK or foreign State pension or a private pension received by them or their partner.
- (b) Where the person is in salaried employment in the UK at the date of application and has been employed by their current employer for less than 6 months (or at least 6 months but the person does not rely on paragraph 13(a)), their gross annual income will be the total of:
- (i) The gross annual salary from employment as it was at the date of application;
  - (ii) The gross amount of any specified non-employment income (other than pension income) received by them or their partner in the 12 months prior to the date of application; and
  - (iii) The gross annual income from a UK or foreign State pension or a private pension received by them or their partner.

In addition, the requirements of paragraph 15 must be met.

- (c) Where the person is the applicant's partner, is in salaried employment outside of the UK at the date of application, has been employed by their current employer for at least 6 months, and is returning to the UK to take up salaried employment in the UK starting within 3 months of their return, the person's gross annual income will be calculated:
- (i) On the basis set out in paragraph 13(a); and also
  - (ii) On that basis but substituting for the gross annual salary at paragraph 13(a)(i) the gross annual salary in the salaried employment in the UK to which they are returning.
- (d) Where the person is the applicant's partner, has been in salaried employment outside of the UK within 12 months of the date of application, and is returning to the UK to take up salaried employment in the UK starting within 3 months of their return, the person's gross annual income will be calculated:
- (i) On the basis set out in paragraph 13(a) but substituting for the gross annual salary at paragraph 13(a)(i) the gross annual salary in the salaried employment in the UK to which they are returning; and also

- (ii) On the basis set out in paragraph 15(b).
- (e) Where the person is self-employed, their gross annual income will be the total of their gross income from their self-employment, from any salaried or non-salaried employment they have had or their partner has had (if their partner is in the UK with permission to work), from specified non-employment income received by them or their partner, and from income from a UK or foreign State pension or a private pension received by them or their partner, in the last full financial year or as an average of the last two full financial years. The requirements of this Appendix for specified evidence relating to these forms of income shall apply as if references to the date of application were references to the end of the relevant financial year(s). The relevant financial year(s) cannot be combined with any financial year(s) to which paragraph 9 applies and vice versa.
  - (f) Where the person is self-employed, they cannot combine their gross annual income at paragraph 13(e) with specified savings in order to meet the level of income required under Appendix FM.
  - (g) Where the person is not relying on income from salaried employment or self-employment, their gross annual income will be the total of:
    - (i) The gross amount of any specified non-employment income (other than pension income) received by them or their partner in the 12 months prior to the date of application; and
    - (ii) The gross annual income from a UK or foreign State pension or a private pension received by them or their partner.
  - (h) Where the person is the applicant's partner and is in self-employment outside the UK at the date of application and is returning to the UK to take up salaried employment in the UK starting within 3 months of their return, the person's gross annual income will be calculated:
    - (i) On the basis set out in paragraph 13(a) but substituting for the gross annual salary at paragraph 13(a)(i) the gross annual salary in the salaried employment in the UK to which they are returning; and also
    - (ii) On the basis set out in paragraph 13(e).
  - (i) Any period of unpaid maternity, paternity, adoption, parental or sick leave in the 12 months prior to the date of application will not be counted towards any period relating to employment, or any period

relating to income from employment, for which this Appendix provides.

- (j) The provisions of paragraph 13 which apply to self-employment and to a person who is self-employed also apply to income from employment and/or shares in a limited company based in the UK of a type to which paragraph 9 applies and to a person in receipt of such income.
- (k) Where the application relies on the employment income of the applicant and the sponsor, all of that income must be calculated either under subparagraph 13(a) or under sub-paragraph 13(b) and paragraph 15, and not under a combination of these methods.

14. Where the requirements of this Appendix and Appendix FM are met by the combined income or cash savings of more than one person, the income or the cash savings must only be counted once unless stated otherwise.”

- 10. The nub of Mr Tufan’s submissions was to rely on the grounds seeking permission to appeal and in particular as the judge found at paragraph 14 of his decision that the specified evidence in relation to self-employment had not been provided the absence of wage slips meant the appellants could not provide specified documentation as required by the Immigration Rules and that the judge had erred in applying a multiplier to the wage slips that he had in order to calculate an annual income.
- 11. Mr Mahmood vehemently argued that these submissions should be rejected by me. He made repeated references to the decision of the Entry Clearance Manager and the material referred to therein but with little reference to the issues falling to me to decide. He was concerned about that material. It did seem that the respondent’s bundle before the First-tier Tribunal Judge was far more substantial than that held by Mr Mahmood but that in itself does not go to the crux of the matter before me. Mr Mahmood urged me to accept that the judge’s approach was a correct one in all the circumstances as otherwise the Immigration Rule itself “makes no sense”.
- 12. The position in this appeal was that the sponsor had been self-employed prior to entering into employment. He only became employed in the month preceding the application. The judge made a clear finding that specified evidence in relation to self-employment had not been provided. This is his conclusion at paragraph 14 of the decision. It was thereafter that he extrapolated from the two payslips provided an annual salary of £26,988 per year. This is the applied analysis shown at paragraph 15 of his decision where he refers to the two payslips which were provided which showed fortnightly payment with the total gross figure for the first month of the sponsor’s employment of £2,249. In the following paragraph the judge concludes therefore that the salaried employment in excess of £26,000 per year of the sponsor was sufficient to meet the income threshold relevant to this appeal.

13. Whilst the income from self-employment can also be taken into account there is in this decision a clear finding that no specified documentation in relation thereto was provided.
14. It is clear from the Immigration Rules that extrapolation is not permissible in the absence of specified documentation. Income must be shown by reference to specified documents that the financial threshold required by Appendix FM has been met in the twelve months prior to the date of application. That evidence was not before the judge in this appeal. There was also no specified documentation relating to the sponsor's self-employment so in any event this was an appeal that inevitably fell to be dismissed.

### **Conclusions**

1. The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.
2. I set aside the decision.
3. I re-make the decision in the appeals by dismissing them.
4. Anonymity orders not made.

Signed

Date 20 April 2015.

Deputy Upper Tribunal Judge Appleyard