



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: OA/04548/2014

THE IMMIGRATION ACTS

Heard at Field House
On 21st October 2015

Determination Promulgated
On 23rd October 2015

Before

UPPER TRIBUNAL JUDGE MARTIN

Between

ABUL KALAM AZAD
(Anonymity Direction not made)

Appellant

and

ENTRY CLEARANCE OFFICER - DHAKA

Respondent

Representation:

For the Appellant: Mr Z Khan (Londinium Solicitors)

For the Respondents: Mr S Kotas (Senior Home Office Presenting Officer)

DETERMINATION AND REASONS

1. This is an appeal to the Upper Tribunal, with permission, by the Appellant with regard to a decision of the First-tier Tribunal (Judge Graham) promulgated on 6th May 2015 by which it dismissed the Appellant's appeal against the Entry Clearance Officer's decision to refuse to grant him leave to enter the UK as a partner under Appendix FM of the Immigration Rules.
2. In her determination Judge Graham set out the requirements of appendix FM in relation to the relationship requirements, financial requirements and English

language requirements and then set out the reasons for refusal by the Entry Clearance Officer. The refusal was on the basis that the Appellant did not meet the income requirement or the related evidential requirements. In this case the Sponsor was required to have a gross income of at least £18,600 per annum and it was alleged that the specified documents contained in appendix FM-SE had not been provided. The Entry Clearance Officer noted that although the Sponsor had submitted personal bank statements, the credits seen within the bank statements did not correspond to the payslips.

3. Furthermore, the Entry Clearance Officer carried out an HMRC check which indicated that the Sponsor had not in fact received any pay in 2013 from her employer.
4. The Entry Clearance Officer also noted that the Appellant had an adverse immigration history which led him to doubt his credibility generally so that he did not accept any of his statements or documents at face value and so with regard to the English language requirements the Entry Clearance Officer was also not satisfied that they reliably demonstrated that the Appellant had passed the stated qualifications.
5. The Judge then set out the evidence that was before her. She heard oral evidence from the Sponsor who was at a loss to explain the conclusion of the document verification report of 2nd March 2014. As a result of that she herself had contacted HMRC and they produced her salary history which was contained in the bundle showing no break in her earnings.
6. The Sponsor was paid cash rather than through a bank and it was not always possible to pay the money into the bank in the same week as she was paid and sometimes she paid in two weeks' salary at a time. She occasionally received some of her wages directly into the bank but she also received cash. Before the First-tier Tribunal the Home Office Presenting Officer acknowledged that the bank statements showed her exact salary being paid into the bank now but that did not appear to be the case previously. However it was accepted that the earlier bank statements referred to in the refusal had not been provided.
7. With regard to the English language test it was explained that the Appellant had retaken the test and that there had been a delay in him being given a date but he had passed the test in June 2014.
8. The Sponsor was unaware of the Appellant's previous adverse immigration history. She now has a child aged two years and three months with her husband. She gave evidence that she keeps in regular contact with her husband and the appeal was also based on Article 8 grounds.
9. The Judge then set out findings of credibility in fact. In relation to the specified evidence that Judge referred herself to paragraph 12A(a)(iii) of Appendix FM-SE.
10. She then considered the document verification report and on the basis of the more recent evidence direct from HMRC was satisfied that the Sponsor did in fact earn

£18,984 gross for the financial year 2013/14 and thus met the financial requirements of Appendix FM.

11. The judge also looked to the English language certificate and was satisfied that the Appellant satisfied the provisions of Appendix FM in regard. The sole reason for dismissing the appeal under Appendix FM was the failure to provide the evidence specified in Appendix FM-SE paragraph 12A(a)(iii).
12. The judge then considered Article 8 and dismissed the appeal.
13. The grounds seeking permission to appeal argue that the judge had erroneously considered paragraph 12A(a)(iii) of Appendix FM-SE as they had no application in applications such as this and the requirements are those contained in paragraph 2(a).
14. The Secretary of State in response to permission being granted on that basis argued that in any event the Appellant could not win because the English language test was not submitted at the time of the application.
15. Before me Mr Kotas withdrew that argument on the basis that the English language test was retaken as a result of an offer to do so being made by Entry Clearance Officer. The Appellant had passed the test and therefore that requirement of the Rules was met.
16. With regard to the incorrect part of appendix FM-SE being considered he accepted that the Judge had considered the wrong requirement in the Rules but that Appendix FM-SE paragraph 2 required both payslips for six months prior to the date of the application and "personal bank statements corresponding to the same period as the payslips at paragraph 2 (a), showing that the salary has been paid into an account in the name of the person or in the name of the person and their partner jointly."
17. It was accepted specifically by the Home Office Presenting Officer before the First-tier Tribunal and by Mr Kotas that the totality of the Sponsor's earnings was indeed paid into her bank account and appeared on the statements. However, he argued that that did not meet the requirements of the Rules because the requirements are that it should "correspond to the same periods" meant that if paid weekly in cash then the money is to be paid into the bank weekly, whereas it was the Sponsor's case that sometimes she paid in two weeks' wages at a time. I reject that interpretation of the requirements of the Rules. It seems clear to me that where the Rules require payslips covering a period of six months prior to the date of application and then require personal bank statements corresponding to the same periods as the payslips that is requiring bank statements covering a period of six months prior to the date of application. It does not require that the salary has to be paid in on any given date in relation to the payment of the salary and provided all of the salary is paid into the account I find that a Sponsor meets the requirements of the Rules. There may be occasions when that does not satisfy the Rules, for example where six months worth of salary is paid in in the last of the six months bank statements. That would lack credibility, but in the circumstances of this case I find it does satisfy the Rule.

18. On the basis that the Judge erred in applying the wrong section of Appendix FM-SE in her deliberations, I set aside her decision. In re-deciding the appeal it is clear the Appellant does meet the requirements of appendix FM for entry clearance as a partner and the appeal is allowed under the Rules.
19. The appeal to the Upper Tribunal is allowed.

Signed

Date 21st of October 2015

Upper Tribunal Judge Martin

Direction regarding anonymity

I make no anonymity direction.

Signed

Date 21st of October 2015

Upper Tribunal Judge Martin