



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: OA/10908/2014

THE IMMIGRATION ACTS

Heard at Field House, London
On 9 November 2015

Determination Promulgated
On 10 November 2015

Before

DEPUTY JUDGE OF THE UPPER TRIBUNAL ARCHER

Between

MRS TASMIA BI

Appellant

and

ENTRY CLEARANCE OFFICER - ISLAMABAD

Respondent

Representation:

For the Appellant: No attendance

For the Respondent: Mr Chris Avery, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. This appeal is not subject to an anonymity order by the First-tier Tribunal pursuant to rule 13 of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014. Neither party has invited me to make an anonymity order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/2698) and I have not done so.
2. The appellant appeals against the decision of the First-tier Tribunal (Judge Kershaw) dismissing the appellant's appeal against a decision taken on 12 August 2014 to

refuse entry clearance as a spouse under paragraph EC-P of Appendix FM of the Immigration Rules (“the Rules”).

Introduction

3. The appellant is a citizen of Pakistan born on 16 March 1993. She is married to Mr Moin Hussain who is a UK citizen born on 13 July 1991.
4. The respondent accepted that the sponsor earned the annual equivalent of £13,721 from his employment with Clean Linen Services Limited. However, the claimed earnings from the sponsor’s second employment as a carer were only shown in the pay slips and not in the bank statements submitted. The requirements of paragraphs EC-P.1.1(d) and E-ECP.3.1 of Appendix FM were not met. There were no exceptional circumstances such as to justify entry clearance outside the Rules.
5. The appeal was considered by an entry clearance manager on 18 November 2014 who concluded that the decision was correct, despite the fact that the second employment was paid in cash and the sponsor had submitted HMRC evidence showing how much he earned from the second employment in 2012-2013. The Rules required that the entire net amount was paid into the sponsor’s bank account.

The Appeal

6. The appellant appealed to the First-tier Tribunal and an oral hearing was listed at Birmingham on 18 February 2015. She was not represented and the sponsor failed to attend the oral hearing. The First-tier Tribunal found that the respondent had correctly interpreted the Rules and that any interference with the right to family life was proportionate.

The Appeal to the Upper Tribunal

7. The appellant sought permission to appeal to the Upper Tribunal on the basis that the First-tier Tribunal had erred in law. The appellant had paid the fee for an oral hearing but the sponsor was not notified of the date of the hearing and the documents submitted were not considered properly. The respondent said that one wage slip for February 2013 was missing but that could easily have been rectified and the sponsor could prove the required £18,600 income.
8. Permission to appeal was granted by First-tier Tribunal Judge Holmes on 17 August 2015 on the basis that the sole basis for rejection appears to have been the respondent’s assertion that a wage slip for February 2013 was missing from the sequence of documents supplied. There was no consideration of paragraph D of Appendix FM-SE by either the respondent or the judge.
9. In a rule 24 response dated 2 September 2015 the respondent submitted that the issue was that the requirement to show the second income in accordance with the Rules was not met, rather than just a single missing wage slip.
10. Thus, the appeal came before me

Discussion

11. The grant of permission is misconceived. The judge did not base the decision on the missing wage slip, which is not mentioned in the reasons for the decision. The decision was based upon the absence of any personal bank statements corresponding to the same periods as the payslips showing that the salary had been paid into an account in the name of the sponsor, as required by paragraph A1.2.(c) of Appendix FM-SE of the Rules. The judge suggested at paragraph 21 of the decision that the sponsor could have shown money going into the account by paying a corresponding net amount into the account himself.
12. The respondent and the judge have correctly interpreted and applied the Rules. That may appear somewhat harsh to the appellant and the sponsor who have submitted HMRC evidence and payslips in relation to the second employment. However, the requirements of Appendix FM-SE are clear and the sponsor simply had to pay the cash earned from the second employment into his bank account to correspond with the pay slips.
13. I am satisfied that the appellant was given notice of the Upper Tribunal hearing on 13 October 2015. The sponsor did not attend. The appellant is not in the UK and there is no other representative. I am satisfied that it is in the interests of justice to proceed with the hearing. I therefore decide the appeal in the absence of the appellant and the sponsor. The requirements of the Rules are not met. There is no evidence of any compelling circumstances such as to justify further consideration of Article 8 outside the Rules.
14. Thus, the First-tier Tribunal's decision to dismiss the appellant's appeal under the Rules and Article 8 did not involve the making of an error of law and its decision stands.

Decision

15. Consequently, I dismiss the appeal of the appellant.

Signed



Date 9 November 2015

Judge Archer
Deputy Judge of the Upper Tribunal