



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: OA/12930/2014

THE IMMIGRATION ACTS

Heard at: Manchester
On: 17th August 2015

Decision and Reasons Promulgated
On: 21st September 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE BRUCE

Between

Secretary of State for the Home Department

Appellant

and

Mrs Snowia Naz
(no anonymity direction made)

Respondent

Representation:

For the Appellant: Mr Harrison, Senior Home Office Presenting Officer

For the Respondent: Mr Akhtar, McKenzie friend.

DETERMINATION AND REASONS

1. The Respondent is a national of Pakistan date of birth 25 November 1986. On the 30 March 2015 the First-tier Tribunal (Judge Levin) allowed her appeal against a decision to refuse to grant her entry clearance as the spouse of a person present and settled in the United Kingdom. The Entry Clearance Officer now has permission to appeal against that decision.

2. The only matter in issue on appeal was whether the Respondent, or rather her British Sponsor Mr Hussain, had complied with all of the requirements of Appendix FM-SE. The sole ground for refusal was that he had failed to produce bank statements showing the regular deposit of his salary, as required by paragraph 2 (c).
3. It is not now in issue that the Sponsor does earn over the amount required by Appendix FM to show adequate maintenance. His gross annual income of over £20,000 comes from two jobs. Since October 2012 he has been employed as a garage manager for Auto Point and earns £17,680 per annum. He has another job, as an administrator, for STU Communications Ltd, that has earned him, since January 2013, a further £216 per week. Both these jobs are cash in hand. This application was made on the 30th September 2013 and a complete set of wage slips for both jobs were submitted with the application. Since he had held both jobs for longer than six months, he was only required to show six months worth of documents.
4. In a review conducted on the 25th November 2014 by an Entry Clearance Manager two problems were identified with the Halifax statements that had also been submitted with the application. The first was that they did not cover the same period as the wage slips. They did not start until March 2013, and the ECM appears to have considered that they had to cover the entire period of employment. The second difficulty was that the Sponsor's income could not be seen being deposited into the account.
5. When the matter came before the First-tier Tribunal the first of these issues was resolved in the Respondent's favour. The application was made on the 30th September 2014 so the relevant six-month period could be taken to be March to September of that year. Halifax statements had been produced to cover that. There was no requirement that they go back to October 2012 when Mr Hussain started at Auto Point. This finding is not now subject to challenge.
6. As to the second problem Mr Hussain conceded that he had not always paid all of his salary straight into the bank. Having received his salary in cash he would use some for living expenses and then pay the rest into the bank. The HOPO on the day calculated that between the 1st March 2014 and the 31st August 2014 the Sponsor had received £10,173 in cash but had only paid £8070 of that into his bank account.
7. Those figures being accepted, the First-tier Tribunal directed itself to paragraph 1(n) of Appendix FM-SE which stipulates that:
 - '(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.'

8. Of this the determination says the following:

"Having regard to the wording of paragraph 1(n) set out above I find that in order to be able to take into account her Sponsor's gross earnings the Appellant is required to show that her Sponsor's bank details **relate to** (my emphasis) the gross amount shown on his bank statements. With reference to paragraph 2(c) the Respondent accepts that the Sponsor has provided personal bank statements corresponding with the same period as the wage slips. The requirement in paragraph 2(c) is merely that the bank statements should show that the salary has been paid into the bank account and there is not requirement that the bank statements should show precisely the same amount. In the absence of either paragraph 1(n) or 2 (c) of Appendix FM-SE containing such a requirement I reject the Respondent's submission that the bank statements must mirror precisely the wage-slips. If this were what was required then Appendix FM-SE should have said so".

9. Judge Levin goes on to explain that he has taken the following matters into account in so interpreting the provisions of Appendix FM-SE. The purpose of the provisions is to seek corroboration that an individual is in fact employed. The bank statements in this case show approximately 80% of the Sponsor's income being deposited and he was an entirely credible witness in explaining that the remaining 20% went on living expenses. If it were needed further corroboration of the Sponsor's employment was provided by the P60s submitted on appeal, the HOPOs submission that the Tribunal was not entitled to take these into account being rejected. Having regard to the wage slips, the letters from the employers, the P60s, the bank statements and the credible oral evidence the Tribunal was satisfied that Mr Hussain is employed as he claims and that he earns well over the £18,600 gross annual income required by Appendix FM. The appeal was allowed for that reason.

10. The Entry Clearance Officer now appeals on the grounds that the First-tier Tribunal "failed to give adequate reasons for findings on a material matter". The grounds do not specify what that failing, or the material matter, is. The particulars appear to allege a wholly different error, namely "drawing conclusions not open to him" in respect of paragraph 1(n) of FM-SE.

My Findings

11. The Tribunal made a finding of fact that this sponsor had, for a period of at least six months prior to the application, been in employment that attracted an annual salary of in excess of £20,000. As Mr Harrison made clear, that finding is not challenged by the Entry Clearance Officer.

12. Rather the complaint is that the Sponsor could not meet the evidential requirements set out in paragraph 2(c) of FM-SE:

‘(c) Personal bank statements corresponding to the same period(s) 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.’

13. The First-tier Tribunal read this paragraph, as it is accepted it was entitled to do, in line with 1(n). It’s reasoning is set out above. Neither the grounds, nor Mr Harrison, were able to identify where the First-tier Tribunal erred in its reasoning. The sum of £8070 was deposited during the relevant six-month period and as a matter of fact this **related to** the sponsor’s salary. The bank statements did show his salary being deposited. As Judge Levin observes, nowhere is it said that the *entire* salary must be so deposited. That interpretation is supported by having regard to the purpose of the Rule. It being accepted that Mr Hussain does in fact have those jobs and that income, it is difficult to see what public interest was served by bringing this appeal.
14. I would also note that the sum of £8070 net in a six-month period in fact exceeds the minimum net income required by Appendix FM E-ECP.3.1. On an annual salary of £18,600 the UK taxpayer was in 2013 likely to take home approximately £7733 in a six month period.
15. This was a careful, detailed and cogent determination which contains no error of law.

Decisions

16. The determination contains no error of law and the decision is upheld.

Deputy Upper Tribunal Judge Bruce
2nd September 2015