Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: OA/14258/2013

THE IMMIGRATION ACTS

Heard at Field House	**Determination Promulgated**
On 16 April 2015	**On 27 April 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE APPLEYARD

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MRS TAHMINA JAHAN CHOWDHURY
(ANONYMITY ORDER NOT MADE)

Respondent

Representation:

For the Appellant: Mr E Tufan, Home Office Presenting Officer
For the Respondent: Mr S Ell, Counsel

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 "the respondent" and Mrs Chowdhury as "the appellant".

2. No application for anonymity had been made hitherto in these proceedings and there is no reason why such an order should be made.

3. The appellant, is a citizen of Bangladesh born 14 April 1988. She applied for leave to enter the United Kingdom as a spouse. The respondent considered the application under Appendix FM of the Immigration Rules HC 395 (as amended). On 3 June 2013 the respondent refused leave resulting in an appeal to the First-tier Tribunal. That was heard by Judge of the First-tier Tribunal Maxwell who in a decision promulgated on 3 December 2014 allowed it under the Immigration Rules.

4. The refusal was because the respondent was not satisfied with the appellant's claim that her partner earned £19,000 per annum from his employment by Gold Menu Restaurant and that his earnings for the relevant period had been checked out by HMRC showing an annual income of only £10,419. Investigations relating to the appellant's English language test proved that the documents relied on were not reliable. However, at the hearing before the First-tier Tribunal Judge the HOPO was, as the judge says at paragraph 6 of his decision:-

> "… placed in the difficult position of having to accept that the checks made with HMRC had been wholly misinterpreted and that the figures cited by the Entry Clearance Officer related to the net income and not the gross income of the appellant's partner. Despite the fact that there is clear evidence of the sponsor having earned in excess of the minimum £18,600 required, the respondent nevertheless maintained that the appellant failed to prove, on the balance of probabilities, that her partner was employed as claimed."

5. This became the only issue for the judge as at the outset of the hearing in the First-tier the HOPO indicated that the issue relating to the English language certificate was no longer in play and that the sole ground of refusal was whether or not the appellant's sponsor was employed as claimed.

6. Judge Maxwell's findings and conclusions can be gleaned from paragraphs 8, 9 and 10 of his decision which state:-

> "8. The thrust of the cross examination of the appellant's sponsor related to the fact that he was paid in cash rather than directly into the bank and this seemed to be the sole basis upon which his employment was doubted. I was somewhat surprised by this, given that payment in cash remains relatively common in the United Kingdom albeit it is no longer the principal means of paying employees. There was no evidence before me to suggest there was anything out of the ordinary about this method of payment and I give little weight to this fact in the light of other more compelling evidence that was presented.
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> 9. The appellant and the respondent had both submitted documentary evidence from HMRC which proved, conclusively in my view, the appellant is employed as claimed and has been so employed for some significant time. It is apparent, from the earlier determination that he claimed employed by this company as long ago as 2011. I find no

reasonable basis whatsoever for this Refusal which has been maintained on the basis of the false premise drawn by the Entry Clearance Manager.

10. I find the appellant has proved, on the balance of probabilities, that her sponsor is employed as claimed, his income exceeds the minimum required under the Immigration rules and that in all respects she does meet the requirements of the Immigration Rules for entry clearance as a partner."

7. The respondent sought permission to appeal and this was granted by Judge of the First-tier Tribunal P J G White on 16 February 2015. His reasons for so granting were:-

"1. The Respondent seeks permission to appeal against a decision of First-tier Tribunal Judge Maxwell who, in a Decision and Reasons promulgated on 3 December 2014 allowed the Appellant's appeal against the Respondent's decision to refuse to grant entry clearance as a spouse.

2. If necessary, I extend time for permission to appeal as I am satisfied that it is in the interests of justice to do so.

3. Having had regard to the grounds for permission to appeal and the Decision and Reasons, I am satisfied that in reaching his decision the judge arguably made an error of law for the following reasons:-

(a) The judge allowed the appeal on the basis that the Appellant met the financial requirements of Appendix FM.

(b) It is arguable, however, that in making his decision the judge has failed to engage with the issue that the specified documentary evidence regarding finances must be provided at the time of the application.

4. Accordingly I am satisfied that the grounds and Decision and Reasons disclose an arguable error of law."

8. Thus the appeal came before me today.

9. Mr Tufan argued that the judge in the First-tier materially misdirected himself in law on the basis that the Immigration Rules relating to specified evidence are comprehensively set out in Appendix FM and Appendix FM-SE to the Immigration Rules and argued that the judge had no regard to these Rules relating to specified evidence when making his findings and conclusions thereby rendering them unsustainable. He argued that it is clear that the appellant cannot meet the requirements of Appendix FM-SE for the six month period prior to the date of application and that these are mandatory requirements thereby causing the appellant to be unable to meet the requirements of the Immigration Rules. Beyond that he argued that where a sponsor is paid in cash, for the gross income to be taken into

account, all of the monies received from employment must be paid directly into the bank. This is a mandatory requirement and where only part of the money is so deposited then only the net amount deposited can be counted when calculating the income for the purposes of meeting the financial requirements of the Immigration Rules.

10. Mr Ell argued that the respondent's position before me was misconceived in that the starting point for any current consideration is why the original application was refused by the Entry Clearance Officer. That was not by reason of the absence of specified evidence but because of the Entry Clearance Officer's assertion that the appellant, via her sponsor's income, could not meet the £18,600 requirement. The payslips had been provided in support of the application and it was these that the judge took into account when concluding that the appellant met the financial requirement. Therefore there was no material error of law as asserted by the respondent.

11. I have considered the totality of the evidence that was put before Judge Maxwell. Contrary to the grounds seeking permission to appeal the relevant payslips were provided to the Entry Clearance Officer at the point of making the application and were before the judge when considering the appeal.

12. The requirements of paragraph 2 of Appendix FM-SE applicable to this appeal states that in terms of salaried employment in the United Kingdom wage slips must be provided for a period of six months prior to the date of application and that personal bank statements corresponding to the same period as the wage slips at paragraph 2A showing that the salary has been paid into an account in the name of a person or their partner jointly.

13. Here the judge had come to conclusions that were open to be made on the evidence that was before him. In short the required documentary evidence was provided at the time of application and considered in the course of the appeal. It is disconcerting that the grounds seeking permission to appeal appear to be misconceived.

Conclusions

14. The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.

15. I do not set aside the decision.

Signed Date 24 April 2015.

Deputy Upper Tribunal Judge Appleyard