



IAC-AH-CO-V1

**Upper Tribunal  
(Immigration and Asylum Chamber)**

Appeal Number: OA/14570/2013

**THE IMMIGRATION ACTS**

**Heard at Birmingham  
On 5<sup>th</sup> June 2015**

**Decision & Reasons Promulgated  
On 18<sup>th</sup> June 2015**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE M A HALL**

**Between**

**ENTRY CLEARANCE OFFICER - NEW DELHI**

Appellant

**and**

**HARDEEP SINGH  
(ANONYMITY DIRECTION NOT MADE)**

Respondent

**Representation:**

For the Appellant: Mr N Smart, Senior Home Office Presenting Officer

For the Respondent: No representation

**DECISION AND REASONS**

**Introduction and Background**

1. The Entry Clearance Officer (ECO) appeals against a decision of Judge of the First-tier Tribunal Sangha (the judge) promulgated on 27<sup>th</sup> August 2014.
2. The Respondent before the Upper Tribunal was the Appellant before the First-tier Tribunal and I will refer to him as the Claimant.

3. The Claimant is a male Indian citizen born 14<sup>th</sup> January 1984 who on 8<sup>th</sup> March 2013 applied for entry clearance as the spouse of Rajnee Kaur who is settled in the United Kingdom, and to whom I shall refer as the Sponsor.

### **The Refusal**

4. The application was refused on 20<sup>th</sup> June 2013. In summary it was contended that false documents had been submitted in connection with the application, these being documents connected with the Sponsor's employment with Mahmood Accountancy Taxation (MAT).
5. The application was also refused because the Respondent did not accept that the Claimant and Sponsor have a genuine and subsisting relationship, and it was not accepted that they intended to live permanently together as spouses.
6. A further reason for refusal was that the financial requirements of Appendix FM were not satisfied. The Sponsor claimed to have two jobs, one working for MAT, and the other working for Sainsbury. Because it was not accepted that the documents submitted in connection with the MAT employment were genuine, the earnings from this employment were not taken into account, and the Respondent calculated that the Sponsor's annual income was £11,256, which was below the £18,600 threshold. The Sponsor did not have sufficient savings to make up the shortfall.

### **Appeal to the First-tier Tribunal**

7. In brief summary it was contended that the reasons for refusal were minor in nature, and the Claimant had not been interviewed by the ECO. The Claimant requested an oral hearing so that it could be established that he was entitled to be granted entry clearance.

### **The First-tier Tribunal Decision**

8. The judge found the evidence of the Sponsor to be largely credible and found that the marriage is genuine and subsisting, and that the parties intended to live together permanently as husband and wife.
9. The judge did not find that the ECO had proved that false documents had been submitted. The judge took into account pay slips issued by MAT together with HMRC documentation and was satisfied that the documentation was genuine.
10. The judge was satisfied that the Sponsor's combined earnings from MAT and Sainsbury exceeded £18,600 per year, and therefore the appeal was allowed under the Immigration Rules.

### **The Application for Permission to Appeal**

11. The ECO applied for permission to appeal to the Upper Tribunal. There was no challenge to the findings that the marriage is genuine and subsisting, and it was not

contended that the judge had erred in rejecting the contention that false documents had been submitted.

12. It was contended that the judge had erred in failing to make any findings in relation to the Sponsor's employment with MAT, in relation to paragraph 2 of Appendix FM-SE. This paragraph sets out the specified evidence that must be submitted, and in relation to salaried employment, this includes pay slips covering a period of six months prior to the date of application for entry clearance, and personal bank statements corresponding to the same period as the pay slips, showing that the salary had been paid into an account in the name of the Sponsor, or the Sponsor and Claimant jointly.
13. It was contended that the judge had failed to make any findings as to whether bank statements had been submitted, showing the payment into the bank account of the Sponsor's salary from MAT. The Sponsor's annual gross income was therefore not clear.

### **Permission to Appeal**

14. Permission to appeal was granted by Designated Judge of the First-tier Tribunal Woodcraft who found it arguable that there was insufficient evidence before the judge to show that the Sponsor had satisfied the requirements of Appendix FM, thus the Sponsor could not demonstrate that her earnings from all sources exceeded the £18,600 threshold.
15. Following the grant of permission there was no response on behalf of the Claimant pursuant to rule 24 of the Tribunal Procedure (Upper Tribunal) Rules 2008. Directions were issued that there should be a hearing before the Upper Tribunal to ascertain whether the First-tier Tribunal had erred in law such that the decision should be set aside
16. The Claimant's solicitors then wrote to the Upper Tribunal on 26<sup>th</sup> January 2015 seeking to withdraw the Claimant's appeal, as he wished to pursue a fresh application. This application was refused by an Upper Tribunal Judge, who pointed out that the Claimant was not the appellant before the Upper Tribunal and consequently could not withdraw the appeal.

### **The Upper Tribunal Hearing**

17. There was no attendance by or on behalf of the Claimant. I was satisfied that proper notice of the time, date and place of the hearing had been given, and this had been acknowledged by a letter dated 28<sup>th</sup> May 2015, from the Claimant's solicitors. This letter acknowledged the hearing date, and confirmed that as the Claimant no longer wished to proceed with this matter, there would be no attendance.
18. In the circumstances, I decided that it was appropriate and in the interests of justice to proceed with the hearing in the Claimant's absence.

### **Error of Law**

19. Mr Smart relied upon grounds contained within the application for permission to appeal.
20. I was satisfied that the judge had erred in law by failing to make findings in relation to paragraph 2 of Appendix FM-SE. The judge had not made any findings as to whether the Claimant had submitted bank statements covering a period of six months prior to the date of application, showing the Sponsor's income from MAT, being paid into a bank account. This had been raised as an issue in the refusal decision, and the judge should have made findings as to whether the specified evidence had been submitted.
21. I found that the absence of findings on a material matter, amounted to an error of law such that the decision must be set aside and re-made.

### **Re-making the Decision**

22. The only issue before me related to the evidential requirements of paragraph 2 of Appendix FM-SE in relation to the Sponsor's employment with MAT. The other findings made by the judge in favour of the Claimant had not been challenged and were therefore preserved.
23. Mr Smart submitted that although Halifax Bank statements in the Sponsor's name had been submitted, they did not show payments covering a period of six months from MAT.
24. Mr Smart pointed out that the Sponsor's evidence to the First-tier Tribunal as set out in paragraph 11 of the decision, was that in relation to her employment with MAT, she was paid in cash the sum of £477.98 per month, and the money was deposited in her bank account on a Friday following receipt of the money.
25. Mr Smart pointed out that the pay slips covering a period six months prior to the date of application, were dated between 30<sup>th</sup> September 2012 and 28<sup>th</sup> February 2013. The bank statements only showed four payments rather than six payments, and the money deposited, which was in the sum of £477.98, was always deposited on a Friday. However the date that the money was deposited preceded the date on the pay slip. For example £477.98 was deposited on 21<sup>st</sup> September 2012, although the pay slip was dated 30<sup>th</sup> September 2012. In November money was deposited on 23<sup>rd</sup> November 2012, whereas the pay slip was dated 30<sup>th</sup> November 2012. It therefore appeared that the Sponsor was depositing cash prior to receiving her wages in cash.
26. I was asked to dismiss the Claimant's appeal.
27. I reserved my decision.

## My Conclusion and Reasons

28. In remaking the decision I have taken into account a bundle of documents submitted on behalf of the ECO, and the Claimant's bundle submitted under cover of a letter from his solicitors dated 19<sup>th</sup> June 2014. Both these bundles had been before the First-tier Tribunal.
29. In relation to the Immigration Rules I bear in mind that the burden of proof is on the Claimant and the standard is a balance of probabilities.
30. The only issue that I was asked to decide related to paragraph 2 of Appendix FM-SE.
31. In relation to her employment with MAT the Sponsor had submitted pay slips covering a six month period prior to the date of application, which was 8<sup>th</sup> March 2013. The earliest pay slip was dated 30<sup>th</sup> September 2012, and the most recent 28<sup>th</sup> February 2013. Pay slips indicated that the Sponsor was paid £477.98 per month, with the exception of October when she took one month's holiday without pay. The Sponsor's employment with MAT was stated to have started on 1<sup>st</sup> September 2012.
32. Paragraph 2(c) of Appendix FM-SE requires that personal bank statements corresponding to the same periods as the pay slips must be submitted, showing that the salary has been paid into the account.
33. The Sponsor submitted Halifax Bank statement in her name. The statements covered a period between 20<sup>th</sup> September 2012 and 20<sup>th</sup> February 2013.
34. The bank statements do show four payments of £477.98 going into the account. Funds went into the account on 21<sup>st</sup> September 2012, 23<sup>rd</sup> November 2012, 21<sup>st</sup> December 2012, and 18<sup>th</sup> January 2013.
35. Paragraph 2(c) must be strictly complied with, and I do not find all the six months' payments from MAT have been paid into the Halifax account. I accept that the pay slip dated 30<sup>th</sup> October 2012 indicates that the Sponsor was not paid for that month, but the Halifax Bank statements should still show five payments relating to the Sponsor's salary from MAT, and only four payments are shown. Therefore there has not been compliance with paragraph 2(c) and the appeal cannot succeed as mandatory specified evidence has not been submitted.
36. This is not an appeal where Article 8 was raised in the appeal before the First-tier Tribunal and there was no consideration of Article 8 before that Tribunal. There has been no indication by the Claimant that he wishes Article 8 to be considered by the Upper Tribunal, and on the contrary, the Claimant has indicated that he does not wish to proceed with this appeal, and his solicitors previously made an unsuccessful application for the appeal to be withdrawn. I therefore do not go on to consider Article 8 of the 1950 European Convention on Human Rights.

**Notice of Decision**

The decision of the First-tier Tribunal contained an error of law and was set aside. I substitute a fresh decision.

The Claimant's appeal is dismissed

**Anonymity**

The First-tier Tribunal made no anonymity direction. There has been no request for anonymity and the Upper Tribunal makes no anonymity order.

Signed

Date 8<sup>th</sup> June 2015

Deputy Upper Tribunal Judge M A Hall

**TO THE RESPONDENT  
FEE AWARD**

The Claimant's appeal is dismissed. There is no fee award.

Signed

Date 8<sup>th</sup> June 2015

Deputy Upper Tribunal Judge M A Hall