



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: OA/16099/2013

THE IMMIGRATION ACTS

Heard at Field House, London
On 6 January 2015

Determination Promulgated
On 8 January 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE GRIMES

Between

ENTRY CLEARANCE OFFICER - ISLAMABAD

Appellant

and

TAHSEEN NAZMA

Respondent

Representation:

For the Appellant: Mr P Nath, Home Office Presenting Officer

For the Respondent: Mr S Bhanji, instructed by Nasim & Co solicitors

DETERMINATION AND REASONS

1. Whilst this is an appeal by the Entry Clearance Officer (ECO), for convenience I will refer to the parties in the determination as they appeared before the First-tier Tribunal.
2. The appellant, a national of Pakistan, appealed to the First-tier Tribunal against the decision of the ECO dated 26 June 2013 to refuse her application for entry clearance to the UK as the partner of Usman Hashmi (the sponsor) under Appendix FM of the Immigration Rules. First-tier Tribunal Judge S Aziz allowed the appeal and the ECO now appeals with permission to this Tribunal.
3. The appellant's case is that the sponsor is self-employed in the UK. The ECO refused the application for entry clearance on the basis that the appellant had not provided the specified evidence in relation to his self-employment set out in Appendix FM-SE.

Error of law

4. It is accepted by the appellant in the skeleton argument that the sponsor needs to show an income of £18,600. The issue in this appeal is the period in relation to which the income must be demonstrated. The appellant made the application for entry clearance on 15 March 2013. The sponsor attended the appeal hearing in the First-tier Tribunal and submitted further evidence in relation to the tax year 2012-2013 which the First-tier Tribunal Judge considered. On the basis of this evidence the First-tier Tribunal Judge was satisfied that the appellant met the requirements of Appendix FM-SE.
5. However Appendix FM -SE D (in force at the relevant date) states that the ECO could consider only documents submitted with the application. Appendix FM -SE 7 sets out the evidence to be provided by a self-employed sponsor. This includes evidence of the amount of tax payable for the 'last financial year', the latest annual self-assessment tax return to HMRC and bank statements for the same 12 month period as the tax return. At the date of the application the last financial year was 2011-2012. The tax return for 2012-2013 could not have been available as the tax year was not yet completed.
6. Mr Bhanji sought to submit that the term 'financial year' relates to a self-employed person's accounting year. He relied on the sponsor's accounts for the period from 1 April 2012-31 January 2013. However I am satisfied that, in the absence of an alternative interpretation in the Rules, the phrase 'last financial year' must be given its normal meaning and must relate, in this case, to the period between 1 April 2011 and 31 March 2012 being the last full financial year before the application was made. Mr Bhanji was unable to show that the sponsor's tax return or bank statements for the financial year 2011-2012 were before the First-tier Tribunal Judge.
7. I am satisfied that the First-tier Tribunal Judge erred in considering that the financial year 2012-2013 was the relevant period and in finding that the specified evidence for the required period had been submitted. As this error is material I must set the decision aside.

Remaking the decision

8. Mr Bhanji confirmed that there was no further evidence to be adduced. I therefore remake the decision on the basis of the evidence before the First-tier Tribunal. The relevant period is the financial year 2011-2012. Some documents have been provided for that period. However the sponsor did not submit the tax return for that period or his business or personal bank statements for that period. As the appellant has not provided the specified evidence in accordance with Appendix FM-SE the appeal cannot succeed.

Conclusion:

The making of the decision of the First-tier Tribunal did involve the making of an error on point of law.

I set the decision aside and remake it by dismissing the appeal.

Signed

Date: 7 January 2015

A Grimes

Deputy Judge of the Upper Tribunal