



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

Appeal Number: OA/17896/2013

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 9<sup>th</sup> January 2015**

**Determination Promulgated  
On 16<sup>th</sup> January 2015**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE M A HALL**

**Between**

**THE ENTRY CLEARANCE OFFICER - ACCRA**

**and**

**EMMANUEL BROWN-ACQUAYE  
(ANONYMITY ORDER NOT MADE)**

Appellant

Respondent

**Representation:**

For the Appellant: Mr S Kandola, Senior Home Office Presenting Officer  
For the Respondent: Mr P Maku-Kemi of Hanson Woods Solicitors

**DECISION AND REASONS**

**Introduction and Background**

1. The Entry Clearance Officer (ECO) appeals against a determination of Judge of the First-tier Tribunal Raymond promulgated on 28<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 citizen of Ghana born 16<sup>th</sup> September 1983 who in June 2013 applied for entry clearance to join his spouse Natasha Brown-Acquaye (the Sponsor) who is a British citizen.
4. The application was refused on 16<sup>th</sup> August 2013 initially with reference to paragraph 320(11) of the Immigration Rules, the ECO taking the view that because the Claimant had previously overstayed, he had contrived in a significant way to frustrate the intentions of the Immigration Rules.
5. In addition it was not accepted that the parties had a genuine and subsisting relationship nor that they intended to live together permanently in the United Kingdom, and the application was also refused on financial grounds. The reason for refusal on financial grounds was that specified documents had not been submitted with the application to prove that the Sponsor had an income of at least £18,600 per annum, as the Sponsor's payslips and bank statements covering a period of six months prior to the date of application had not been submitted. Finally the application was refused as there was no evidence that the Claimant satisfied the English language requirements.
6. The Claimant lodged an appeal, and the application was reviewed by an Entry Clearance Manager who conceded that the Claimant satisfied the English language requirements, as the appropriate test certificate had been submitted. It was also conceded that the Claimant's actions in previously overstaying did not constitute aggravating factors, and therefore the ECO no longer relied upon paragraph 320(11).
7. The appeal was heard by Judge Raymond (the judge) on 12<sup>th</sup> August 2014, with the issues to be decided being whether the parties had a subsisting relationship and intended to live permanently with each other, and whether the financial requirements of Appendix FM were satisfied.
8. The judge heard evidence from the Sponsor and found in favour of the Claimant under the Immigration Rules, and therefore allowed the appeal under the Immigration Rules. The judge did not therefore go on to consider Article 8 of the 1950 European Convention on Human Rights (the 1950 Convention) although this had been raised as a ground of appeal.
9. The ECO was granted permission to appeal to the Upper Tribunal. There was no challenge to the findings that the parties had a genuine and subsisting relationship and intended to live permanently with each other, but the findings made by the judge in relation to finance were challenged as it was contended that in the absence of specified evidence, the judge had erred in finding that the financial requirements of Appendix FM were satisfied.
10. Permission to appeal was granted and there was a hearing before me on 28<sup>th</sup> November 2014. I found that the judge erred in law and set aside the decision of the First-tier Tribunal. In brief summary it was apparent that incomplete financial documentation had been submitted to the ECO. Although further documents had been submitted to the First-tier Tribunal, the documentation was still incomplete

when the hearing took place on 12<sup>th</sup> August 2014, and the judge gave the Claimant's solicitors a period of six days following the hearing, to submit the missing documentation.

11. Further documents were then submitted, which included bank statements covering a period of six months prior to the application being made and further payslips. However the payslip for May 2013 had not been submitted, and therefore payslips covering the six month period prior to the date of application had not been submitted. For this reason I found that the judge erred in allowing the appeal under the Immigration Rules.
12. Full details of the application for permission to appeal, and the grant of permission, and my full reasons for finding an error of law are set out in my decision dated 1<sup>st</sup> December 2014.
13. I was asked not to proceed and remake the decision but to adjourn to allow the Sponsor an opportunity to obtain a copy of her May 2013 payslip, and submit this in order to prove that all the specified documentation required had been produced, and therefore the decision could be remade and allowed.
14. There was no objection to the proposed adjournment, and I therefore agreed to adjourn the hearing until 9<sup>th</sup> January 2015, and issued directions that the missing payslip should be submitted at least ten clear days before the next hearing date.

### **The Upper Tribunal Hearing 9<sup>th</sup> January 2015**

15. Mr Kandola confirmed that the Claimant's representatives had submitted the May 2013 payslip together with a letter from the Sponsor's employer confirming its authenticity, and it was therefore conceded that the required specified evidence had been submitted and the Claimant's appeal should be allowed as the requirements of Appendix FM were satisfied.
16. I announced that the appeal was allowed and that I would issue a written decision.

### **My Conclusion and Reasons**

17. Having set aside the decision of the First-tier Tribunal at the hearing on 28<sup>th</sup> November 2014, the only issue before the Upper Tribunal related to the financial provisions of Appendix FM.
18. The burden of proof was on the Claimant, and the standard a balance of probability.
19. I am satisfied that the Sponsor was at the relevant time, and still is, in employment. I am satisfied that her annual income exceeds the required minimum of £18,600. I am satisfied that the required specified documentation has now been submitted.
20. Because the Sponsor is in salaried employment in the United Kingdom, the documentation that must be submitted to prove her salary is set out in paragraph 2 of Appendix FM-SE.

21. Paragraph 2(a)(i) states that payslips must be submitted covering a period of six months prior to the date of application if the Sponsor has been employed by the current employer for at least six months. In this case the Sponsor has been employed by her current employer for at least six months, and has submitted payslips covering the six months prior to the date of application which was made in June 2013. The only payslip that was missing before the First-tier Tribunal, related to May 2013, and that has now been provided, together with an appropriate covering letter from the Sponsor's employer.
22. Paragraph 2(b) of Appendix FM-SE requires a letter from the employer who issued payslips confirming the employment and gross annual salary, the length of employment, the period over which the individual has been paid the level of salary relied upon in the application, and the type of employment. A letter from the Sponsor's employment has been submitted covering these points.
23. Paragraph 2(c) requires that personal bank statements must be submitted covering the same period as covered by the payslips, and the Sponsor submitted those bank statements, showing that the salary in her payslips was paid into her account.
24. In addition the Sponsor submitted her P60 tax form, for the tax year ending April 2013, which confirmed that her salary was £24,145.25.
25. The Claimant's appeal was therefore allowed because, as conceded at the hearing before me by Mr Kandola, it had been proved that the Sponsor had a salary in excess of £18,600, and the specified evidence set out in Appendix FM-SE had, eventually, been provided.
26. Because the Claimant's appeal was allowed under the Immigration Rules, I was not asked to go on and consider Article 8 of the 1950 Convention.

### **Notice of Decision**

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

The Claimant's appeal is allowed under the Immigration Rules.

### **Anonymity**

No anonymity direction was made by the First-tier Tribunal and there has been no request to the Upper Tribunal for anonymity. I make no anonymity order.

Signed

Date 12<sup>th</sup> January 2015

Deputy Upper Tribunal Judge M A Hall

**TO THE RESPONDENT  
FEE AWARD**

As the Claimant's appeal has been allowed I have considered whether it is appropriate to make a fee award. I find that it is not. The application was correctly refused because the specified financial documents had not been submitted with the application. The defects in the documentation were not remedied when the appeal was submitted nor at the hearing before the First-tier Tribunal. There is therefore no fee award.

Signed

Date 12<sup>th</sup> January 2015

Deputy Upper Tribunal Judge M A Hall