



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: OA/18546/2013
OA/18548/2013

THE IMMIGRATION ACTS

Heard at Bradford
On 13 April 2015

Decision & Reasons Promulgated
On 05 May 2015

Before

UPPER TRIBUNAL JUDGE CLIVE LANE

Between

ENTRY CLEARANCE OFFICER - DHAKA

Appellant

and

**AMY AKTHER CHOWDHOWRY
ABARAR HAMIN MAHI
(ANONYMITY DIRECTION NOT MADE)**

Respondents

Representation:

For the Appellant: Mr M Diwnycz, Senior Home Office Presenting Officer
For the Respondents: Mr B Smith, Counsel instructed by A Bajwa & Co, Solicitors

DECISION AND REASONS

1. The respondents, Amy Chowdhowry and Abarar Mahi, shall hereafter be referred to in this decision as the appellants (as they appeared before the First-tier Tribunal). The appellant, the Entry Clearance Officer, Dhaka, shall be referred to as the Respondent.
2. The first appellant is the mother of the second appellant. They both sought to enter the United Kingdom for settlement with the sponsor, Abdul Hannan, who is the husband of the first appellant and father of the second appellant. An application was

refused by the Entry Clearance Officer (Dhaka) in a decision dated 23 September 2014. The appellants appealed to the First-tier Tribunal (Judge D A Pears) which, in a determination promulgated on 4 December 2014, allowed the appeal. The Entry Clearance Officer now appeals, with permission, to the Upper Tribunal.

3. The appeal turns on a relatively narrow point. The respondent had refused the application of the appellants because the sponsor's supporting financial evidence failed to comply with Appendix FM-SE. The sponsor had failed to submit bank statements corresponding to the same period as the payslips showing the salary has been paid into the person's account: the refusal letter records that, "while I am aware you have submitted bank statements, the credits in the account do not correspond with the amounts indicated on the payslips". It is not disputed that the cash sums paid gross to the sponsor (who works in the Joypur Restaurant) were not remitted in full to the bank account for which he has now produced statements. The sponsor had produced P60 forms for 2013 and 2014 showing gross annual income of £23,531 and £23,600 respectively. As Judge Pears noted, the sponsor received about £450 per week gross "but they are not fixed [payments] and vary by a few pounds per week and he pays about £360 from his cash payments into his bank account with Yorkshire Bank". Judge Pears went on to note at [8] that:

Paragraph 2 of Appendix FM-SE includes this, in respect of *salaried* [my emphasis] employment in the UK all the following evidence must be provided (f) monthly personal bank statements corresponding to the same period as the wage slips at paragraph 2(c) showing that the *salary* [my emphasis] has been paid into an account in the name of the person....

4. Judge Pears went on to make two points. First, he considered that the Immigration Rules did not "envisage cash wages but straight bank transfers from the employer's bank account to the employee's bank account." I am not sure that that necessarily follows from the requirement set out in Appendix FM-SE. The second point was that the Rule referred only to "salaried employment in the UK and the sponsor is not in salaried employment but receives variably weekly wages." Judge Pears noted the Oxford English dictionary definition of the salary as "fixed payment made periodically to a person as compensation for regular work: now usually restricted to payments made for non-manual or non-mechanical work (as opposed to *wages*)." In consequence, Judge Pears did not consider that Appendix FM-SE had any "applicability to the appellant and sponsor." He found that the sponsor had proved by submitting his P60s, wage slips, bank statements and a letter from his employer that he earned more than £22,400 per annum. On that basis, he allowed the appeal.
5. The grounds of appeal assert that the judge erred in law by exempting the sponsor from producing the evidence required by Appendix FM-SE in respect of his income.
6. This appeal turns on the construction of the words "salaried employment in the UK" as they appear in Appendix FM-SE. The question is whether the proper construction of "salaried employment" is wide enough to embrace the employment circumstances of the sponsor in this instance. Having regard to the ordinary meaning of the words and to the Oxford English dictionary definition there is, arguably, a difference

between “salary” and “wages”, the latter most generally being used in respect of payment for (variable) hours worked whereas a “salary” is determined by payment of an annual sum by way of remuneration divided into and paid at either monthly or weekly intervals depending on the terms of the contract of employment. I am, however, not persuaded that the Immigration Rules at Appendix FM-SE intend to make any distinction between wages and salaried employment. At Appendix FM-SE, A1(cc) it is stated that, “the income of an applicant or sponsor working in the UK *in salaried or non-salaried employment or in self-employment* [my emphasis] can include income from work undertaken overseas...”. That reference to “non-salaried employment” is the only such reference that I can find in Appendix FM-SE. As a consequence and as I seek explain below, I am not persuaded that the definition of salaried employment is so narrow as to exclude income from employment which is paid as wages; to make that distinction is to impose a construction on the provisions of Appendix FM which the ordinary meaning of the words used cannot support.

7. Dealing with the various requirements to supply documents in support of an application, Appendix FM-SE deals variously with salaried employment [2]; salaried employment outside the UK [3]; a job offer in the UK [4]; statutory or contractual sick pay in the UK [6]; self-employment in the UK as a partner or sole trader who own a franchise [7]; self-employment outside of the UK [8]; income “from employment and/or shares in a limited company based in the UK of the type specified in paragraph 9(a)” [9]; non-employment income [10]. An income derived from wages (as opposed to a salary) is not provided for at all under Appendix FM-SE. As I have noted, the single reference to “non-salaried employment” to which I have referred above does not recur and is not one of the categories of income from employment or non-employment dealt with in the remainder of the paragraphs. Following Judge Pears’ logic, Appendix FM-SE provides for there to be no specified document requirements at all in respect of wage to the employment which is not salaried. I do not consider that that can be right. It makes no sense at all that the Rules should be drafted in a way such that certain sponsors, in receipt of wages as opposed to salary, would be exempt from any requirement to provide documentary evidence on her income. The only logical construction of the Rules, therefore, leads me to conclude that the words “salaried employment” must cover an individual such as the sponsor in the present case whether or not he receives a salary or wages. It is unfortunate that the reference to “non-salaried employment” is not defined at all in the text of Appendix FM-SE but I consider that nothing more than an infelicity in the drafting of the Rules. I find, therefore, that the sponsor in the present case was required to prove that his income was sufficient was paid on a regular basis into his bank account. The sponsor acknowledges that the credits shown in the account are insufficient to satisfy the income requirement. It follows from that that Judge Pears erred in law by allowing the appeal. I have therefore set aside his determination and have re-made the decision. The appeals of the appellants against the decisions of the Entry Clearance Officer are dismissed.

DECISION

8. The First-tier Tribunal erred in law such that its determination falls to be set aside. I have re-made the decision. The appeals of the appellants against the decisions of the Entry Clearance Officer, Dhaka are dismissed under the Immigration Rules.

Signed

Date 29 April 2015

Upper Tribunal Judge Clive Lane