



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: OA/21696/2013

**THE IMMIGRATION ACTS**

Heard at Manchester Piccadilly  
On 10 March 2015

Decision Promulgated  
On 13 April 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE BIRRELL

Between

RUKHSHANA JAVADI  
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Ms Faryl counsel instructed by M A Consultants  
For the Respondent: Ms C Johnstone

**DECISION AND REASONS**

Introduction

1. I have considered whether any parties require the protection of an anonymity direction. No anonymity direction was made previously in respect of this Appellant. Having considered all the circumstances and evidence I do not consider it necessary to make an anonymity direction.

2. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge Levin promulgated on 28 October 2014 which dismissed the Appellant's appeal on all grounds.

### Background

3. The Appellant was born on 11 November 1987 and is a national of Afghanistan.
4. On 13 August 2013 the Appellant applied for entry clearance to the United Kingdom as the wife of the Sponsor Aziz Javadi under Appendix FM of the Rules.
5. On 1 November 2013 the Secretary of State refused the Appellant's application. The refusal letter gave two reasons for refusal:
  - (a) The Appellant did not meet the eligibility requirements for entry clearance as a partner.
  - (b) The Appellant did not meet the financial requirements because the Appellant claimed that the sponsor was self employed and received an income of £19,297 in the last financial year but the Appellant had failed to produce three items of specified evidence in support of the sponsor's earnings as specified in paragraph 7 of Appendix FM-SE namely her sponsors Statement of Account (SA300 or SA302) as required by paragraph 7(b)(ii), her sponsors bank statement for the same 12 month period as the tax returns where her sponsor holds or held a separate business bank account as required by 7(e) and his personal bank statement for the same 12 month period as the tax returns showing that his income from self employment has been paid into an account in his name as required by paragraph 7(f).

### The Judge's Decision

6. The Appellant appealed to the First-tier Tribunal. First-tier Tribunal Judge Levin ("the Judge") dismissed the appeal against the Respondent's decision. The Judge set out at paragraph 15-18 set out the relevant law identifying at paragraph 18 those documents that it was asserted the Appellant had failed to produce. He found:
  - (a) The marriage of the parties was genuine and subsisting.
  - (b) The Appellant had to establish by the required evidence that her sponsor earned £18600 in the relevant financial year which was 6 April 2012 to 5 April 2013.
  - (c) The business accounts were prepared by Accounts and Taxation Centre and paragraph 7(h)(ii)(bb) required that they were members of a UK Recognised Supervisory Body and produce a certificate of confirmation to that effect and the case had been adjourned for all parties to submit evidence as to whether the Sponsors accountants met this requirement at the time the accounts were prepared as a members of the Institute of Financial Accountants.

- (d) Ms Faryl relied on a document at pages 6-7 of the Appellant's bundle which was stated to be an extract from the Home Office guidelines confirming members of registered bodies. Ms Faryl was unable to produce the complete document.
  - (e) He did not accept that the pages referred to in (d) above were from the Home Office guidance.
  - (f) Moreover he found that even if he accepted it was extracted from such guidance there was a requirement for those who prepared the accounts to be either a fully qualified chartered accountant or a certified accountant who is a member of a registered body and at the date the accounts were prepared in April 2013 the sponsors accountants did not meet this requirement.
  - (g) He considered Ms Faryl's submission that Mr Zafar of Accounts and Taxation Centre had from 30 May 2014 been a member of a UK Supervisory Body by virtue of section D(b) (i) (dd) of Appendix FM and therefore met the requirements of the Rules. He did not find that Mr Zafar's situation came within section D as at the time of preparing the business accounts Mr Zafar was not a member of a United Kingdom Supervisory Body and therefore the accounts had not been prepared by someone who was a member of such a body and the Appellant had not therefore produced a specified document.
  - (h) While Mr Zafar became a member of ACCA 12 months after the accounts in this case were prepared there was no certificate before the Judge as required by paragraph 7 of Appendix FM-SE to show that he had either personally prepared the accounts or signed them off as being a true reflection of the Appellant's income.
7. Grounds of appeal were lodged which argued that the Judge had failed to acknowledge that the requirement for bank statements from a business account or personal bank statements were alternatives or make any findings in relation to that ground; that in focusing on the requirement for the accounts to be prepared by an accountant who was a member of a UK Recognised Supervisory Body the Judge was taking a point not taken by the ECO or ECM and the Appellant was entitled to consider that requirement was waived; in the alternative that defect in the application was cured after the matter was raised for the first time by the Home Office Presenting Officer on 14 August 2014.
8. On 12 January 2015 First-tier Tribunal Judge Scott Baker gave permission to appeal.
9. I heard submissions from Ms Faryl at the hearing on behalf of the Appellant that (a) She relied on the grounds of appeal.
- (a) The income itself was not disputed simply whether the Appellant had produced the specified documents.
  - (b) I also took into account additional written submissions dated 26 March from MA Consultants which were invited in a letter dated 13 March 2015 by the Tribunal.

10. On behalf of the Respondent Ms Johnstone submitted that she relied on her Rule 24 response.

### **Finding on Material Error**

11. Having heard those submissions I reached the conclusion that the Tribunal made no material errors of law.
12. This was an out of country application for entry clearance as a spouse where the sponsor Mr Javadi was self employed as a builder and had to establish by mandatory evidence as required by Appendix FM-SE that he earned £18,600. In this case it was accepted that the year in issue was 6 April 2012 to 5 April 2013. The appeal against the refusal decision came before First-tier Tribunal Judge Levin and the hearing took place over three separate dates.
13. It is argued that in dismissing the appeal because the Appellant had produced unaudited accounts that were not prepared by an accountant who was a member of a UK Recognised Supervisory Body as required by paragraph 7(h)(i)(bb) the Judge had raised an issue not raised by the Entry Clearance Officer or the ECM. I am satisfied that the failure of the Respondent in the refusal letter to identify one of the requirements of the Rules that the Appellant had not met was not a waiver or a concession as there has been no positive act by the Respondent it was simply a failure that did not bind the Judge. In A (Somalia) [2004] UKIAT 00065, during the course of the closing submissions made on the appellant's behalf by her counsel, the adjudicator stated, for the first time, that he considered the appellant's nationality to be in issue. The fact that the respondent had not raised the point, either during the course of the hearing or previously, was no reason why the adjudicator himself should not do so. The onus to (apply for an adjournment or recall the appellant) was on the appellant's counsel not on the Adjudicator.
14. I am satisfied that there was no procedural unfairness in the Judges conduct of the case. Following the initial hearing of the case on 14 August 2014 the Judge having identified that there was a requirement for the Accounts in issue to be provided by an accountant who was a member of a UK Recognised Supervisory Body he issued Directions to the parties on 20 August 2014 allowing them the opportunity to address this issue and relisted the matter for an oral hearing on 8 September 2014 and again on 8 October 2014 where Ms Faryl made submissions in relation to this issue.
15. The alternative argument advanced in the grounds is that while the Appellant's accountants may not have been members of the required body at the time the accounts were prepared a letter was produced from a Mr Zafar on the notepaper of RMI Accountancy (previously known as the Accounts and Taxation Centre) confirming that he was admitted as a member of the ACCA on 31 May 2014. Ms Faryl argued that section D of Appendix FM-SE applied and the Appellant had therefore produced the required specified document albeit it was produced after the date of application. The Judge set out at paragraph 38 the requirements of section D in relation to circumstances in which the decision maker might contact the Appellant or his representatives and consider documents submitted after the application. He considered her argument advanced that subsection (dd) applied in that the Appellant had supplied a 'document which does not contain all of the specified information.' He

found at paragraph 39 that the this proviso did not apply as the defect could not have been cured by the decision maker contacting the Appellant or his representative at the time the decision was made because Mr Zafar was not a member of the Supervising body at that time. I accept that had the post decision evidence shown that those who prepared the accounts were at the time they prepared the accounts members of the United Kingdom supervisory body the Judge would have been able to take such evidence into account but that was not the case. I am satisfied that the Judges findings were open to him on the evidence before him and that the appeal was bound to fail because the Appellant had not produced the specified evidence as required.

16. The first ground argues that the Judge made no findings in respect of the challenge raised in the refusal letter that the Appellant had not produced either business bank account statements for the same 12 month period as the tax return or in the alternative personal bank statements for the same 12 month period showing the income from self employment being paid into the account. It was also argued that the Judge had failed to identify that these requirements were alternatives.
17. I am satisfied that having identified at paragraph 5 that this was an issue raised in the refusal letter the Judge failed to make findings on this issue. However given my finding above that the Appellant had failed to provide the accounts produced by an accountant who was a member of a UK Recognised Supervisory Body such a failure would not have been material as the appeal was bound to fail.
18. I was therefore satisfied that the Judge's determination when read as a whole set out findings that were sustainable and sufficiently detailed and based on cogent reasoning.

## **CONCLUSION**

19. **I therefore found that no errors of law have been established and that the Judge's determination should stand.**

## **DECISION**

20. **The appeal is dismissed.**

Signed

Date 2.4.2015

Deputy Upper Tribunal Judge Birrell