



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

Appeal Number: OA/01370/2015

THE IMMIGRATION ACTS

Heard at Bradford

On 17 March 2016

**Decision & Reasons
Promulgated
On 18 May 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE HANBURY

Between

**MRS SHUMALIA KASHIF
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: No representative

For the Respondent: Mr M Diwnycz, a Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. The appellant is a citizen of Pakistan born on 16 April 1986. She appeals against the decision of First-tier Tribunal Judge Walker (“the Immigration Judge”) promulgated 30 June 2015 (“the Decision”). Permission to appeal

was initially refused by First-tier Tribunal Judge Manuell on 23 September 2015 but subsequently granted by Upper Tribunal Judge Smith on 28 October 2015.

2. At paragraph 3 Upper Tribunal Judge Smith noted that the refusal had in fact solely been on the basis that unaudited accounts had been submitted in support of the application for entry clearance as the spouse of a person present and settled in the UK. It was arguable in her view that the requirement of the Rules that the sponsor produce “audited accounts” went beyond the requirements of paragraph 7(h) of Appendix FM-SE. The Upper Tribunal Judge noted that the wording of that provision was “ambiguous”. Therefore, it was arguable, in her view, that a confirmation letter from an accountant who was a member of a recognised body may suffice.

Background

3. The present appeal arises out of an application the appellant made for entry clearance under Appendix FM of the Immigration Rules. Unfortunately, the date of that application is not revealed in the documents before me. The decision to refuse entry clearance was made on 9 December 2014 by the ECO in Islamabad, Pakistan. On 30 December 2014 the appellant sought to appeal the refusal of entry clearance to the First-tier Tribunal (FtT). This triggered a review by the Entry Clearance Manager (ECM) on 13 March 2015. The ECM maintained the decision, pointing out that in his view the appellant failed to provide annual audited or unaudited accounts with the appeal bundle so as to satisfy the respondent that the appellant was able to meet the maintenance requirements in relation to the sponsor’s claimed income. Therefore, the respondent was unable to accept that the appellant qualified under Appendix FM.
4. The appellant therefore maintained her appeal to the FtT which came before the Immigration Judge at North Shields sitting on 24 June 2015. His decision was promulgated on 30 June 2015.
5. The Immigration Judge reminded himself that the appellant had the burden of showing on a balance of probabilities that she satisfied the requirements of Appendix FM of the Immigration Rules. The Immigration Judge was only able to look at post-refusal evidence if it appertained to the date of the decision. The case would only be considered exceptionally outside the Immigration Rules if the appellant met the requirements of Article 8 of the ECHR and the interference with her family or private life was of such gravity as to engage that Article. He noted that the decision had been made according to the law in his view but because the financial requirements of E-ECP.3.3 were not met (self-employed income as a taxi driver and for a business called Flame’s Takeaway had not been provided to HMRC). Furthermore, the ECM’s review commented on the failure to meet the annual audited or unaudited accounts requirement.

6. Both representatives attended the Tribunal and made representations and the sponsor had been able to provide confirmation from HMRC in the form of a form (SA302) confirming his income but was still unable to provide the required accountancy documents/accounts. Accordingly, the Immigration Judge considered himself bound to maintain the refusal and dismissed the appeal.

The Upper Tribunal Proceedings

7. Following the grant of permission by Upper Tribunal Judge Smith, directions were sent to the parties that the Upper Tribunal would not consider any evidence which was not before the FtT unless notice had been given in accordance with Rule 15(2A) of the Tribunal Procedure (Upper Tribunal) Rules 2008 and satisfied the requirements of those Rules. Such notice was to be given and documents were to be served no later than 21 days before the hearing.
8. At the hearing the sponsor, Mr Saghir, attended with a cousin, Ms Aziz, who purported to speak on his behalf. Mr Saghir was able to confirm that the appellant was his wife. I pointed out to Ms Aziz that as a “McKenzie friend” she was entitled to advise and assist the appellant but not to act as an advocate on his behalf. I found it difficult to get this point home and in fact Ms Aziz did, effectively, speak on behalf of the appellant rather as though she were acting as an advocate.
9. The respondent’s representative, Mr Diwnycz, pointed out that his client had submitted a response under Rule 24 of the 2008 Rules. This provided that the respondent opposed the appeal, submitting that the FtT had directed itself appropriately.
10. Mr Diwnycz went on to point out that the Immigration Judge had made a valid point about the absence of appropriate accounts. The case was looked at at the date of the decision and at that date the appellant did not satisfy the requirement of the Rules. The lack of audited accounts was therefore a proper reason for refusal in this case and a proper reason for the Immigration Judge to dismiss the appeal.
11. The appellant pointed out through Ms Aziz that the calculation of income had not been correct. Ms Aziz embarked on a complicated explanation of how the tax figures differed. As far as the suffix “AFA” referred to in the accountant’s letter dated 27 July 2014 is concerned, this letter provided confirmation that as the accountant for the sponsor, who lived at 288 Southfield Lane, Bradford, BD7 3DN, he was the accountant for the business. The letters “AFA” stood for “member of Associate of Institutional Financial Accountants”. However, that was not an organisation the respondent recognised.

12. At this point I was helpfully referred by Mr Diwnycz to the Immigration Law Handbook 9th Edition at page 1178/1179. Paragraph 7(h)(iv) provides for the provision of “one of the following” documents in respect of self-employment as a partner, a sole trader or under a franchise agreement. If the business is required to provide annual audited accounts those documents for the full financial year had to be produced. Where unaudited accounts were permitted an accountant’s certificate of confirmation that he was a member of a UK recognised supervisory body as defined by the Companies Act 2006 was required. Mr Diwnycz pointed out that neither of these alternatives were fulfilled.
13. Ms Aziz commented that her understanding was that a full eighteen-page tax form was submitted. She said there was “no discrepancy”, she said there was no request for any additional documents and no requirement for audited or unaudited accounts as she understood it.
14. At the end of the hearing I reserved my decision which I will give having summarised my reasons below.

Discussion

15. Upper Tribunal Judge Smith, when she gave permission on the renewed application for permission to appeal, commented on the fact that paragraph 7(h) of Appendix FM appeared to her to be “ambiguously worded” (see paragraph 3 of her grant of permission). Judge Smith did not explain what she meant by this but I assume she was referring to the fact that some types of business are required to produce “audited accounts” and others are required to produce “unaudited accounts”. However, in the latter case, the accountant has to be “a member of a UK recognised supervisory body”. I have not been referred to any authority on the meaning of “UK recognised supervisory body” but have referred to the Companies Act 2006. Schedule 10 allows the Secretary of State for business innovation and skills to recognise such bodies. I can find no information on the “Association of Institutional Financial Accountants” and therefore assume it is not a “UK recognised supervisory body”.
16. The FtT considered the documents provided, including the income and expenditure accounts produced by Mr Ali. The Immigration Judge noted a number of discrepancies. Whether they were true discrepancies or not, he also found that the “To whom it may concern” letter from “the appellant’s accountant” (presumably the letter dated 27 July 2014) did not contain any explanation of the letters “AFA” and no additional evidence had been placed before the Immigration Judge. In my view, the Immigration Judge was entitled to reject this evidence as it did not comply with the Rules, although it had been submitted to the ECM and was also considered by him. It follows also that the Immigration Judge was entitled to come to the decision he came to which was in accordance with the law.

17. Neither the letter dated 27 July 2014 nor the document headed "income and expenditure account for the period ended 5 April 2014" appear to me to amount to a certificate of confirmation within the meaning of paragraph 7(h)(bb) of Appendix FM. Accordingly, it appears that the appellant did not provide information on the sponsor's income and expenditure of the type required for the financial year in question in compliance with Appendix FM.
18. Therefore, the respondent was justified in rejecting the application and the FtT in dismissing the appeal.

Notice of Decision

I do not find any material error in the decision of the FtT and the decision to dismiss the appeal against the refusal of entry clearance stands.

No anonymity direction was made by the FtT and I make no anonymity direction.

Signed

Date 18 May 2016

Deputy Upper Tribunal Judge Hanbury

TO THE RESPONDENT
FEE AWARD

I have dismissed the appeal and therefore make no fee award.

Signed

Date 18 May 2016

Deputy Upper Tribunal Judge Hanbury