



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

Appeal number: OA/02507/2015

THE IMMIGRATION ACTS

**Heard at Field House
On July 6, 2016**

**Decision & Reasons Promulgated
On July 12, 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE ALIS

Between

THE ENTRY CLEARANCE OFFICER

and

**MRS LAME MPH
(NO ANONYMITY DIRECTION)**

Appellant

Respondent

Representation:

For the Appellant: Mr Bramble (Home Office Presenting Officer)

For the Respondent: Represented by the Sponsor, Mr Tebo

DECISION AND REASONS

1. The respondent in these proceedings was the appellant before the First-tier Tribunal. From hereon I have referred to the parties as they were in the First-

tier Tribunal so that for example reference to the respondent is a reference to the Secretary of State for the Home Department.

2. The Appellant is a citizen of Botswana. On December 1, 2014 the appellant applied for entry clearance to the United Kingdom as a spouse. The respondent refused his application on January 13, 2015.
3. The appellant appealed that decision under section 82(1) of the Nationality, Immigration and Asylum Act 2002 on February 2, 2015 and asked for the matter to be dealt with on the papers.
4. The appeal came before Judge of the First-tier Tribunal Ennals (hereinafter referred to as the Judge) on December 11, 2015 and in a decision promulgated on December 21, 2015 he allowed the appellant's appeal under the Immigration Rules.
5. The respondent lodged grounds of appeal on December 29, 2015 submitting the Judge had erred in his assessment under Appendix FM by failing to have regard to the provisions of Appendix FM-SE of the Immigration Rules and in particular the provisions relating to the requirement to submit payslips and corresponding bank statements over a twelve-month period in light of the fact the appellant had only commenced work in September 2014 and his application was submitted three months later.
6. Permission to appeal was granted by Judge of the First-tier Tribunal Parkes on May 28, 2016 who found it was arguable the Judge's approach was flawed.
7. The matter came before me on the above date and I heard submissions from both Mr Bramble and the sponsor.
8. No anonymity direction has been made.

SUBMISSIONS

9. Mr Bramble relied on the grounds of appeal and referred me to the provisions of Appendix FM-SE of the Immigration Rules and in particular sections A1(2) which makes clear that where an appellant has not been in his current employment for six months then he has to provide:
 - a. A letter from the employer confirming his employment and gross annual salary.
 - b. The length of the employment.
 - c. The period over which the salary has been paid.
 - d. The type of employment.
 - e. Personal bank statements corresponding to the same period as the payslips showing the salary had been paid into the account.

10. Mr Bramble submitted the income from Care Direct Recruitment (one of the appellant's employers) did not appear in the bank statements and the income adduced did not satisfy the minimum income threshold of £18,600.
11. The sponsor indicated he had sent all his papers to the Tribunal and asked that the case be dealt with on the papers. He confirmed that he had finished work in December 2013 and had gone to Botswana returning around September 2014 when he commenced work. He believed he had provided the necessary papers.

DISCUSSION AND FINDINGS

12. In giving permission to appeal the Judge noted that post decision evidence may have been submitted and it was unclear whether the Judge had had regard to the Immigration Rules and in particular Appendix FM-SE. In granting permission Judge of the First-tier Tribunal Parkes noted there was no challenge to the Judge's finding that the marriage was genuine.
13. The Judge was dealing with an entry clearance application and such applications are governed by Appendix FM and Appendix FM-SE of the Immigration Rules. The Judge must only consider evidence submitted with the application subject to the exception set out in Appendix FM-SE (D)(b) or (e).
14. In this case the appellant provided a letter of employment and a contract of employment dated September 10 and October 13, 2014 respectively. The letter indicated a salary of £7,497 per annum and the contract indicated a salary £15,026 per annum. It is clear the sponsor ceased working in the United Kingdom on December 11, 2013 and according to his submission today he indicated that because he wanted an extended holiday he was informed he would have to re-apply for his job back in his return.
15. Although he produced payslips for 2013 all of these pre-dated his application by more than twelve months save one which was his final payslip in December 2013. He then produced two payslips prior to the date of application and two that post-dated his application. Appendix FM-SE (D) prevents these later wage-slips being introduced. In respect of his second employment he produced invoices that pre-dated his application and some that post-dated his application.
16. The appellant's application form was contained in the bundle in section E and attached to the form was the employment letter dated September 10, 2014 from Care Direct, offer of employment letter dated September 12, 2014 from Autism Sussex, two payslips from Autism Sussex and three payslips from Care Direct. The application was submitted on December 1, 2014. The

required documents as specified in Appendix FM-SE were not included namely bank statements.

17. The bank statements and evidence of their relationship were submitted with the grounds of appeal and this evidence could be found in Section D of the bundle. The grounds of appeal submitted by the appellant make clear that specified evidence was only attached with the grounds of appeal but this was not evidence the Judge should have had regard to in light of Appendix FM-SE(D).
18. If the sponsor is still in these two employments, then it seems to me that he is likely to now meet the Rules although ultimately that is a matter for the respondent.
19. The Judge had to consider what had been submitted with the application and by considering evidence after the application had been lodged and the decision had been taken (see statement in Fee Award) the Judge erred in law.
20. I therefore set aside the decision allowing the appeal and remake the decision by dismissing it under the Rules.

DECISION

21. The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law. I set aside the decision. I remake the decision and I dismiss the appeal under the Immigration Rules.

Signed:

Dated:



Deputy Upper Tribunal Judge Alis

TO THE RESPONDENT
FEE AWARD

No fee award is made.

Signed

Dated



Deputy Upper Tribunal Judge Alis