



IAC-AH-SAR-V1

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

Appeal Number: OA/02512/2015

THE IMMIGRATION ACTS

**Heard At Bennett House, Stoke-On-Trent
On 7 March 2016**

**Decision & Reasons Promulgated
On 5 April 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE MONSON

Between

**MR HAFIZ MUHAMMAD BANARAS
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

ENTRY CLEARANCE OFFICER - ISLAMABAD

Respondent

Representation:

For the Appellant: Mrs S Mushtaq, Sponsor

For the Respondent: Mr A McVeety, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant appeals to the Upper Tribunal from the decision of the First-tier Tribunal (Judge North sitting at Bennett House on 28 August 2015) dismissing his appeal against the decision of an Entry Clearance Officer to refuse him entry

clearance as the spouse of a person present and settled here for non-compliance with the financial requirements. The First-tier Tribunal did not make an anonymity direction, and I do not consider that the appellant requires anonymity for these proceedings in the Upper Tribunal.

The Reasons for Grant of Permission to Appeal

2. First-tier Tribunal Judge Page granted the appellant permission to appeal for the following reasons:

“2. The permission to appeal application complains that the judge was in error in stating that the appellant’s sponsor, as proof of her self-employment income, had failed to provide her annual accounts, twelve months’ bank statements and proof of registration with HMRC as a self-employed person. The appellant states that all of these documents were provided by the appellant in support of his application for entry clearance. At paragraph 8 of the decision the judge has stated the sponsor did not provide proof of registration with HMRC as a self-employed person and went on to find that because the appellant had not submitted the prerequisite documents, the Immigration Rules had not been met by the appellant. I remind myself that it is not my function at the permission to appeal stage to make findings on the merits of the appellant’s application. The appellant claims that he did meet the annual income threshold of £18,600 and that this had been demonstrated by the submission of the prerequisite documentation to meet the requirements of the Rules. This is obviously an issue that has to be considered further so permission to appeal is granted.”

Relevant Background

3. The appellant is a national of Pakistan, whose date of birth is 22 July 1985. He applied for entry clearance on 3 October 2014. The refusal of entry clearance is undated, and it is apparent from surrounding documents that the appellant received the notice of decision on 20 January 2015.
4. According to the notice of decision, in Part 3A of the form the appellant stated that the sponsor had been employed by Gap Personnel Holding Limited since September 2013, and was earning an annual gross income before tax of £6,087. The Entry Clearance Officer set out the documents that were required to prove salaried employment, and said that the appellant had provided the necessary documents to evidence the sponsor’s declared income from employment with Gap Personnel Holding Limited.
5. In Part C of the Appendix C form, he had stated his sponsor was also self-employed as a sewing machinist, and had earned £8,835 from self-employment in the last financial year.
6. The Entry Clearance Officer went on to list the documents which were required under the Rules. He had not provided proof of registration with HMRC as self-employed; or monthly personal bank statements for the same twelve month period as the tax return showing that the income from self-employment had been paid into

an account in the name of the person or the name of the person and their partner jointly; or her latest annual audited or unaudited accounts with the name of the accountant clearly shown; and the accountant must be a member of an accredited accounting body specified in paragraph 19(g)(ii) of Appendix A of the Rules.

7. Accordingly, he was refusing the application under paragraph EC-P.1.1(d) of Appendix FM.

The Hearing Before, and the Decision of, the First-tier Tribunal

8. The appellant was not legally represented before Judge North. There was an appearance by a Presenting Officer on behalf of the Entry Clearance Officer. The sponsor attended the hearing, and gave oral evidence. She also made submissions on the appellant's behalf.
9. In his subsequent decision, the judge observed at paragraph [7] that there were problems with the sponsor's claimed income from self-employment. Taking the two sources of income together, the sponsor did not reach the required income threshold of £18,600 per annum.
10. There were also additional problems concerning her self-employment. She had not produced the required documentation as set out in the Entry Clearance Officer's decision. Whilst it was accepted the tax demand issued to the sponsor by HMRC mentioned income from self-employment, that document did not meet the requirement to produce the original copy of the initial registration document.
11. The judge said that at the hearing the sponsor had produced a bundle which included her bank statements for the year 2015. He said these could not be taken into account as the date of the decision appealed against was 13 January 2015. Her oral evidence was that her self-employment took the form of bespoke sewing for individual clients, and that she had not kept accounts other than notes in her own diary. The judge found that therefore she could not have satisfied the requirement to produce her latest audited or unaudited accounts.
12. The judge dismissed the appeal under the Rules, and at paragraph [11] he gave his reasons for dismissing an alternative claim under Article 8 ECHR. She gave evidence that she and her 2 year old daughter had visited the appellant in Pakistan, and that they kept in touch daily by telephone and electronic means. She acknowledged that if she was to organise her documentary evidence she could now lodge a satisfactory application supported by the required evidence to show that the Rules could now be met. In the circumstances, he was satisfied that the appellant could not succeed under Article 8. The ability of the parties to maintain contact with each other and to lodge a fresh application satisfying the Immigration Rules satisfied him that the ECO's decision was proportionate to the legitimate aim of immigration control.

The Hearing in the Upper Tribunal

13. At the hearing before me to determine whether an error of law was made out, I reviewed the documents that had been before the First-tier Tribunal with Mr McVeety's assistance. I also heard from the sponsor.

Discussion

14. The appellant and the sponsor clearly had legal assistance in drafting the grounds of appeal to the Upper Tribunal.
15. Ground 1 asserts that the judge miscalculated the sponsor's earnings from her employment with Gap Personnel Holding Limited. In support of the application, the appellant had provided a sponsorship declaration which expressly stated that the sum of £6,087 represented the sponsor's income from employment for a period of *six months* from 14 March 2014 to 5 September 2014. This amount was commensurate with a run of six months' wage slips provided by the sponsor. It did not establish her *annual* income from employment, which would have been twice the above figure.
16. I did not have a copy of the application form or sponsorship declaration in my file, and nor did Mr McVeety. However, I was able to establish from other documents, including a P60 for the tax year ending April 2015, that there was potential merit in this error of law challenge.
17. I accept that the sponsor earned the figure stated in the six month period to 5 September 2014, and that over the entire financial year ending in April 2015 she earned just over £12,000 gross from her employment. In so far as it is material, the sponsor's earnings were considerably less in the period from September 2013 to April 2014. In that period, her total earnings were less than £3,000.
18. The source of the confusion may be the employment letter dated 22 January 2015 issued by Adam Millward of Gap Personnel. In this letter, he said that the sponsor had commenced employment on 23 September 2013 on a temporary contract. On 31 December 2013 she signed a permanent Gap Personnel contract which offered her work on an ongoing basis. She worked anything up to 39.5 hours per week at a pay rate of £7 per hour.
19. What this letter does not do is to specify the sponsor's gross annual salary, or the period over which she has been or was paid the level of salary relied upon in the application.
20. Accordingly, although the Entry Clearance Officer stated in the refusal notice that the appellant had provided the necessary documents to evidence an annual gross income before tax of £6,087, I do not consider that the Entry Clearance Officer can be held to this concession with respect to an asserted annual gross income before tax of £6,087 x 2. In short, while I accept on the balance of probabilities that the sponsor was in fact earning a gross annual income of over £12,000 at the date of application and/or decision, she has not shown that the judge erred in law in treating her as only having

an annual gross income before tax from her employment with Gap Personnel Holding Limited of £6,087.

21. But even if I am wrong about that, no error of law is made out in respect of the judge's finding on the sponsor's income from self-employment. I am satisfied that the appellant did not provide all the required documents to show that the sponsor had earned £8,835 from self-employment. I asked the sponsor about her bank statements, and she agreed that it was not possible to ascertain from the bank statements which cash deposits relate to income from self-employment.
22. The sponsor did not provide an original certified copy of the registration documentation issued by HMRC, which is the required form of proof of registration with HMRC as self-employed. Although the sponsor provided a set of accounts, it is not shown that the accountant is a member of an accredited accounting body specified in paragraph 19(g)(ii) of Appendix A of the Rules.
23. It is arguable that the Entry Clearance Officer should have exercised evidential flexibility with respect to the registration document, as it is apparent from other documents provided with the application that the sponsor must be registered with HMRC as self-employed. But in the light of the sponsor's oral evidence about her accounting procedures, the non-compliance with the other evidential requirements cannot lightly be brushed away. Accordingly, the judge has given adequate reasons for finding that claimed earnings from self-employment cannot be taken into account.

Notice of Decision

The decision of the First-tier Tribunal did not contain an error of law, and accordingly the decision stands. This appeal to the Upper Tribunal is dismissed.

I make no anonymity direction.

Signed

Date

Deputy Upper Tribunal Judge Monson