



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

Appeal Number: OA/04093/2014

THE IMMIGRATION ACTS

Heard at Birmingham Employment Tribunal Decision & Reasons Promulgated

On 22 January 2016

On 26 January 2016

Before

DEPUTY UPPER TRIBUNAL JUDGE KAMARA

Between

THE ENTRY CLEARANCE OFFICER (ISLAMABAD)

Appellant

and

MRS SEHRISH MALIK
(ANONYMITY DIRECTION NOT MADE)

Respondent

Representation:

For the Appellant: Mr A Mc Veety, Senior Home Office Presenting Officer
For the Respondent: Mrs H Massih, counsel instructed by Kausers Solicitors

DECISION AND REASONS

1. The Entry Clearance Officer (ECO) appeals the decision of First-tier Tribunal Judges Chohan and Coaster, promulgated on 26 November 2014, allowing an appeal against a decision to refuse the respondent leave to enter the United Kingdom as a partner.

Background

2. The respondent's application was refused on 24 February 2014 under paragraph S-EC 2.2 (a) of Appendix FM. The reasons given were that

there were discrepancies between HMRC records and the employment information provided by the sponsor; HMRC had no tax records for the sponsor and when asked to provide further information about the sponsor's employment, the respondent had not done so. It was considered that the sponsor had misrepresented his income in order to facilitate the visa application.

3. In appealing the ECO's decision, it was argued on the respondent's behalf that no evidence of discrepancies had been produced; the ECO failed to thoroughly consider the evidence of employment and that additional information had been provided. The grounds further referred to the ECO's failure to have any regard to the rights of a British child affected by the decision.
4. An Entry Clearance Manager (ECM) did not review the decision to refuse entry owing to staff shortages.
5. At the hearing before the FTTJ, there was discussion as to the lack of any consideration of any other aspect of Appendix FM; the absence of any HMRC evidence and the paucity of information in the document verification report. The sponsor spoke only to rely on the contents of his witness statement. The panel allowed the appeal under the Immigration Rules. They declined to attach any weight to the verification report; they accepted that the sponsor had sent additional employment documentation and that he was employed as claimed.

Error of law

6. The grounds of application argue, firstly, that the panel erred in considering new evidence relied upon by the sponsor rather than remitting the matter to the ECO to verify. Secondly, the panel erred in assuming that ECO was satisfied that the requirements of the Rules were met.
7. FTTJ O'Garro granted permission to appeal; stating the decision of the panel raised an arguable point of law as to whether an appeal could be allowed under the Rules in these circumstances. She found that the panel gave clear and valid legal reasons as to why no weight was attached to the verification report, however permission was not refused on this ground.
8. The respondent's Rule 24 response referred to a letter from UKVI to the respondent, which advised her that her application fell to be refused "solely" because she did not meet the income threshold. The panel had not assumed the ECO was satisfied regarding the Rules, but satisfied themselves that the requirements were met. It was said to be unfair for the case to be remitted to the ECO owing to the delay thus far.
9. At the hearing before me, Mr McVeety indicated that he was content to rely on the grounds as drafted. He admitted that he was in some difficulties in arguing that the panel ought to have considered all the requirements of Appendix FM when the ECO had clearly stated that the sole issue is was one of maintenance.

10. Mrs Massih relied upon her skeleton argument and rule 24 response. She asked me to note that the judge granting permission had concluded that the panel's findings on the verification report were sound and were not the basis on which permission was granted. There were no other issues before the Tribunal. She invited me to uphold the decision of the First-tier Tribunal. In response to my query regarding a matter raised in the second paragraph of the grounds, Mrs Massih explained that the additional evidence relied upon by the respondent went to the issues raised in the document verification report and not to Appendix FM. At that juncture, Mr McVeety interjected to indicate that this was also his understanding.
11. At the end of the hearing, I announced that the First-tier Tribunal panel made no error of law and upheld their decision. My reasons are as follows.
12. Mr/Ms M Partridge, the Head of Section, UKVI, wrote to the respondent on 8 January 2014, clearly stating that her application fell to be refused solely on the basis of not meeting the maintenance requirement. That position was maintained in the notice of decision dated 24 February 2014. On the day of the hearing, the ECO's representative, Ms Knight, did not raise any other issue before the panel, as noted at [16] of the decision and reasons. Mr McVeety rightly accepted that the panel made no error in focusing on the sole issue before them. Furthermore, the panel cannot be criticised for commenting that all other requirements of the Rules were met.
13. It was said in the grounds that the panel admitted documentation provided by the sponsor at the hearing. However, both representatives were in agreement that the sponsor's evidence did not go to the issue of whether the minimum income threshold was met but to that of whether he had misrepresented his income as the ECO had alleged. In these circumstances, in order for there to be a fair hearing, the sponsor's evidence to challenge the ECO's assertions had to be assessed. The panel did so at [14] of the decision; found it to be reliable evidence and accepted that the sponsor was employed as claimed. They did not err in reaching these findings.
14. I accordingly dismiss the Entry Clearance Officer's appeal.

Decision

- (1) The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law
- (2) The decision of the FTTJ is upheld, with all findings preserved.

No application for anonymity was made and I could see no reason to make such a direction.

Signed

Date: 24 January 2016

Deputy Upper Tribunal Judge Kamara