



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: OA/09486/2014

THE IMMIGRATION ACTS

Heard at Glasgow
on 1 February 2016

Determination issued
On 4 February 2016

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

ENTRY CLEARANCE OFFICER, ACCRA

Appellant

and

CHARLOTTE BOATEMAA

Respondent

Representation

For the Appellant: The sponsor, Mr Daniel Donkor
For the Respondent: Mr M Matthews, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The parties are as described above, but the rest of this determination refers to them as they were in the First-tier Tribunal.
2. The appellant is a citizen of Ghana, born on 21 September 1988. She has not asked for an anonymity direction, and none has been made.
3. The appellant applied for clearance to enter the UK under Appendix FM of the Immigration Rules as the partner of the sponsor. The Entry Clearance Officer refused that application for reasons stated in a decision dated 20 August 2014.
4. The appellant appealed to the First-tier Tribunal. Designated Judge Murray allowed her appeal by decision promulgated on 6 July 2015.
5. The Entry Clearance Officer's grounds of appeal to the Upper Tribunal are based on "material misdirection of law". Reference is made to the requirements of the

Immigration Rules for the specified evidence by which the sponsor's annual income of at least £18,600 had to be shown. The application was made on 26 June 2014, so the last full financial year was 2013 - 14. As the application depended on income both from employment and from self-employment of the sponsor, the relevant income from employment required also to be earned in the financial year 2013 - 2014. The judge erred by having regard to the sponsor's employment from "2 February 2014 for one year" (paragraph 15 of the determination).

6. On 11 November 2015 Designated Judge Shaerf granted permission to appeal, on the view that the judge arguably did not look at the partner's income for the relevant period, being the past financial year, and so misdirected herself in arriving at the conclusion that the sponsor had an income in excess of the minimum income requirement of the Immigration Rules.
7. The determination might bear the construction that there had been some concession by the Presenting Officer in the First-tier Tribunal. However, Mr Matthews was able to demonstrate that the extent of the submission for the respondent was that the appellant might be able to succeed on a fresh application, but was unable to do so by reference to the evidence for the financial year 6 April 2013 to 5 April 2014.
8. Mr Donkor referred to a form P60, to a letter from HMRC, and to his payslips. However, it became clear that the evidence supports only earnings for the relevant period which fall short of the sum required.
9. The sponsor approached the matter in a straightforward and candid manner, and from information available, it appears that a fresh application is likely to be granted. It is perhaps unfortunate that the entry to the UK of the appellant and of the child of the relationship has been delayed through these proceedings. (I explained to the sponsor that a successful outcome to a fresh application is of course not guaranteed, being contingent on satisfactory supporting evidence.)
10. The judge based her decision on evidence which did not relate to the correct period of time. She reached a conclusion which was not open to her, correctly applying the rules to the evidence which did go to that period. Her determination of the First-tier Tribunal has to be **set aside**, and there can only be one outcome.
11. The appeal, as originally brought to the First-tier Tribunal, is **dismissed**.



1 February 2016
Upper Tribunal Judge Macleman