



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: OA/10068/2014

THE IMMIGRATION ACTS

Heard at Field House
On 5 April 2016

Decision and Reasons Promulgated
On 29 April 2016

Before

DEPUTY UPPER TRIBUNAL JUDGE SYMES

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

And

FAITH KICONCO SERUNJOGI
(NO ANONYMITY ORDER MADE)

Respondent

Representation:

For the Appellant: Mr E Tufan (Senior Home Office Presenting Officer)
For the Respondent: The Sponsor

DECISION AND REASONS

1. This is the appeal of the Secretary of State against the decision of the First-tier Tribunal of 30 September 2015 to allow the appeal of Faith Kiconco Serunjogi a citizen of Uganda born 11 November 1987, against the refusal of entry clearance dated 5 August 2014.

2. The application was to join her husband in the United Kingdom, and it was refused because the aggregate earnings relied upon were insufficient: his employed earnings with the Epsom and St Helier NHS Trust did not themselves reach the threshold of £18,600 and the self-employed earnings he relied on to supplement them were considered not to meet the requirements of the Immigration Rules.
3. The First-tier Tribunal allowed the appeal having heard oral evidence from the Sponsor Henry Serunjogi, which it accepted as credible, that his earnings exceeded £19,000 annually. The Judge noted that further documents had been brought to court by way of HMRC documents, a document issued by his accountant confirming his work for the company, Makiki Ltd, of which he is the sole director, and the figures required by the HMRC demanding tax.
4. Grounds of appeal argued that the findings of fact were of such brevity that it could not be seen how the appeal succeeded applying the financial requirements by reference to the relevant specified documents set out in Appendix FM-SE.
5. The First-tier Tribunal granted permission to appeal on 15 February 2016 because there was an arguable error in the findings of fact relating to the evidence before the Judge.

Findings and reasons

6. The relevant Immigration Rules are these, within Appendix FM-SE:

“2. In respect of salaried employment in the UK (except where paragraph 9 applies), all of the following evidence must be provided: (a) Payslips covering: (i) a period of 6 months prior to the date of application if the person has been employed by their current employer for at least 6 months (and where paragraph 13(b) of this Appendix does not apply); or (ii) any period of salaried employment in the period of 12 months prior to the date of application if the person has been employed by their current employer for less than 6 months (or at least 6 months but the person does not rely on paragraph 13(a) of this Appendix), or in the financial year(s) relied upon by a self-employed person.

(b) A letter from the employer(s) who issued the payslips at paragraph 2(a) confirming:

- (i) the person’s employment and gross annual salary;
- (ii) the length of their employment;
- (iii) the period over which they have been or were paid the level of salary relied upon in the application; and
- (iv) the type of employment (permanent, fixed-term contract or agency).

(c) Personal bank statements corresponding to the same period(s) as the payslips at paragraph 2(a), showing that the salary has been paid into an account in the name of the person or in the name of the person and their partner jointly.

(d) Where the person is a director of a limited company based in the UK, evidence that the company is not of a type specified in paragraph 9(a). This can include the latest Annual Return filed at Companies House.

(e) Where a person appointed as a non-executive director of a limited company based in the UK, which is not a company of the type specified in paragraph 9(a), is paid a fee instead of a salary, this income may be treated and evidenced as though it were income received for employment in that capacity.

...

7. In respect of self-employment in the UK as a partner, as a sole trader or in a franchise all of the following must be provided:

(a) Evidence of the amount of tax payable, paid and unpaid for the last full financial year.

(b) The following documents for the last full financial year, or for the last two such years (where those documents show the necessary level of gross income as an average of those two years):

(i) annual self-assessment tax return to HMRC (a copy or print-out); and

(ii) Statement of Account (SA300 or SA302).

(c) Proof of registration with HMRC as self-employed if available.

(d) Each partner's Unique Tax Reference Number (UTR) and/or the UTR of the partnership or business.

(e) Where the person holds or held a separate business bank account(s), bank statements for the same 12-month period as the tax return(s).

(f) personal bank statements for the same 12-month period as the tax return(s) showing that the income from self-employment has been paid into an account in the name of the person or in the name of the person and their partner jointly.

(g) Evidence of ongoing self-employment through evidence of payment of Class 2 National Insurance contributions, or (where the person has reached state pension age) through alternative evidence (which may include, but is not confined to, evidence of ongoing payment of business rates, business-related insurance premiums, employer National Insurance contributions or franchise payments to the parent company).

(h) One of the following documents must also be submitted: (i) (aa) If the business is required to produce annual audited accounts, such accounts for the last full financial year; or

(bb) If the business is not required to produce annual audited accounts, unaudited accounts for the last full financial year and an accountant's certificate of confirmation, from an accountant who is a member of a UK Recognised Supervisory Body (as defined in the Companies Act 2006);

(ii) A certificate of VAT registration and the VAT return for the last full financial year (a copy or print-out) confirming the VAT registration number, if turnover is in excess of £79,000 or was in excess of the threshold which applied during the last full financial year;

(iii) Evidence to show appropriate planning permission or local planning authority consent is held to operate the type/class of business at the trading address (where this is a local authority requirement); or

- (iv) A franchise agreement signed by both parties.
- (i) The document referred to in paragraph 7(h)(iv) must be provided if the organisation is a franchise."

7. It will be seen that these complex provisions contain various requirements which go far beyond the mere calculation of net earnings.
8. The authorities recognise that reasons must be given for both the determination of the appeal and the material findings of fact upon which that decision is based and they must be provided in sufficient detail to "enable the reader to know what conclusion the decision maker has reached on the principal controversial issues": see Lord Bridge in *Save Britain's Heritage v No 1 Poultry Ltd* [1991] 1 WLR 153.
9. It is very unfortunate that the First-tier Tribunal has not identified the particular Rules which were in issue before it and the evidence upon which it was confident that those Rules were satisfied. This is particularly important given that the relevant period is that leading up to the date of application, whereas the First-tier Tribunal refers to further documents brought to the Tribunal hearing without clarifying whether these demonstrated the relevant financial requirements in the period leading up to the application or at the date of the appeal hearing. As was stated by the Court of Appeal in *Pankina* [2010] EWCA Civ 7 at [39]:

"the question whether at the date of the application the specified funds had been in the applicant's bank account for three continuous months cannot intelligibly be answered by evidence that they had not, albeit they now have been."


10. It is accordingly essential that the income for employment be demonstrated for six months prior to the application date (presuming the job has been held for more than six months at that time) and that self-employed income be shown over the last full financial year before that date. The decision of the First-tier Tribunal does not explain how it is that it was satisfied of these matters to the minimum standard required for its ruling to stand.
11. Before me Mr Serunjogi expressed dissatisfaction with the Home Office's refusal to recognise that he had in fact satisfied the relevant Rules and their pursuit of an appeal that he considered unmeritorious, but unfortunately the mass of documents on the Tribunal's file did not appear to have any explanatory note or accompanying schedule that demonstrated how the various criteria above were satisfied at the date of application. He should take steps to present the relevant information as efficiently as possible before the next hearing - it would doubtless assist the First-tier Tribunal greatly if any bundle provided was indexed and paginated with a schedule cross-referencing how it is that every requirement of the Rules above are met.

Decision:

The decision of the First-tier Tribunal contains a material error of law and the appeal is remitted for hearing to the First-tier Tribunal.

Signed:

Date: 27 April 2016

A handwritten signature in black ink, appearing to read 'M. A. Symes', with a long, sweeping underline that extends to the left and then curves back under the signature.

Deputy Upper Tribunal Judge Symes