



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: OA/11512/2014

THE IMMIGRATION ACTS

Heard at Field House
On 4th February 2016

Decision & Reasons Promulgated
On 8th July 2016

Before

DEPUTY UPPER TRIBUNAL JUDGE MANDALIA

Between

ENTRY CLEARANCE OFFICER - ISLAMABAD

and

MRS. RABIA BIBI
(NO ANONYMITY DIRECTION MADE)

Appellant

Respondent

Representation:

For the Appellant: Mr S Kotas, Home Office Presenting Officer
For the Respondent: Mr A Pretzell instructed by Haris Ali Solicitors

DECISION AND REASONS

1. This is an appeal against a decision and reasons by First-tier Tribunal Judge Nightingale promulgated on 25th August 2015 in which she allowed an appeal against a decision made by the Entry Clearance Officer on 19th August 2014 refusing the appellant leave to enter the UK as a spouse of a British Citizen.

2. The appellant before me, is the Entry Clearance Officer and the respondent to this appeal, is Mrs Rabia Bibi. However for ease of reference, in the course of this decision I shall adopt the parties' status as it was before the First-tier Tribunal. I shall in this decision, refer to Mrs Bibi as the appellant and the Entry Clearance Officer as the respondent.

Background

3. The respondent's decision of 19th August 2014 alleged that the information relied upon by the appellant in support of the application was false. The appellant claimed that her sponsor (husband) was employed by Airport on Time Ltd at the time of the application for entry clearance and indeed had worked with that employer since 2010. The respondent claimed that checks carried out with HMRC established that HMRC have no record of the appellant's sponsor holding any employment during the tax year 2012/13. It was also said that Companies House has no record of a company named "Airport on Time".
4. The appellant appealed and the respondent's decision to refuse the application was reviewed by an Entry Clearance Manager taking into account all of the supporting documents provided. The Entry Clearance Manager maintained that the appellant provided false documents and made false statements in her application and that the refusal under the suitability requirements of Appendix FM was therefore justified.

The decision of First-tier Tribunal Judge Nightingale

5. On appeal, it was uncontroversial that the application for entry clearance had been made on 4th July 2013 and the six-month period prior to that application to which evidence had to be provided, ran from 28th December 2012 to 28th June 2013.
6. First-tier Tribunal Judge Nightingale heard the submissions made on behalf of both parties, that are recorded at paragraphs [10] to [16] of her decision. Having

considered the evidence and the submissions made, she sets out her findings and reasons for allowing the appeal at paragraphs [20] to [25] of her decision.

7. The Judge found at paragraph [21] that the respondent has not established on the balance of probabilities that HMRC informed the respondent that they have no record of the sponsor holding any employment during the tax year 2012/2013. She noted, at paragraph [22] that there was no evidence before her that there is no record of any company named "Airport On time". She found at paragraph [22] that the respondent had not discharged the burden of proof, on balance, to show that any false document or false representation has been used in the course of making the application.
8. The Judge then turned to the immigration rules and in particular the requirement that the appellant and her partner are able to maintain themselves adequately in the UK without recourse to public funds. To that end, the Judge states:

"23.The sponsor needs to show that he has a gross income of at least £18,600 per annum. In order to establish that he does so, he must produce the evidence specified at Appendix FM-SE sub-paragraph (2). There are three separate heads with regard to the specified evidence. They are, in short, pay slips, bank statements and a letter from the employer. With regard to the pay slips, I am satisfied that the appellant has produced her husband's pay slips from Airport On time Limited for the six-month period prior to this application. I have considered Mr Dhanji's very helpful arithmetic, and I am satisfied that the amounts shown on these pay slips do, indeed, indicate that he earned just in excess of £18,600 when represented as an annual figure.

24. However, I do find some anomalies with the amounts shown on his pay slips and the amounts shown going into his bank account. The bank statements must show the salary going into the sponsor's account. Largely, the bank statements do show the sponsor's salary going into his account, but there are some payments which are slightly less and, also, slightly more than the figures shown on the pay slips. Given that the sponsor works in a family business, and that his employer is his father, it may well be the case that his father sometimes pays him slightly less, but later makes up the salary with a larger payment in the following week or month. Having added up the total amount

shown going into the sponsor's account over the requisite period of time, I am satisfied that the indicated salary is paid into his account albeit if not always in the regular amounts shown on the pay slips. I find that the bank statements do, overall, accord with the pay slips and corroborate the salary."

...

9. The Judge found at paragraph [25] of her decision that the letters from the sponsor's employer meet the requirements of the specified evidence. She concluded that on the balance of probabilities she was "*satisfied that the specified documentation has been provided to establish that the earnings are in excess of the required £18,600.*". The Judge found that the appellant meets the requirements of the Immigration Rules for entry to the UK as the spouse of a British Citizen and allowed the appeal under the Immigration Rules.
10. The respondent refers to the anomalies that were referred to in paragraph [24] of the decision, and submits that the Judge erred in finding that the financial requirement is met. The respondent submits that if there are differences between the amounts shown on the two documents (*i.e. the wage slips and the bank statements*) the payments cannot be said to correspond, and the requirements of Appendix FM-SE, are not met.
11. Permission to appeal was granted by First-tier Tribunal Judge McDade on 20th December 2015. The matter comes before me to consider whether or not the decision of First-tier Tribunal Judge Nightingale involved the making of a material error of law, and if so, to remake the decision.
12. Mr Kotas submits on behalf of the respondent that Appendix FM-SE does not provide any discretion. He submits that the purpose of the rule is to ensure that there is evidence that the earnings received by an applicant are paid into the applicant's bank account. The earnings shown on the wage slips must therefore match the earnings credited to the applicant's bank account. He accepts that the rules do not expressly require that the exact amount shown upon a wage slip is

shown as a credit in the bank statements, but he submits that if there is no clear audit trail between what is earned by a sponsor as shown in wage slips, and what is credited into the sponsor's bank account, one is left with rules that are simply unworkable. He submits that the rules must be strictly applied and that a "near miss" in the sense that the payments into a sponsor's bank account almost match the earnings disclosed in the sponsor's wage slips, is not good enough.

13. I accept that the specified evidence required in support of an application is there to establish an audit trail between what is earned by a sponsor as shown in wage slips, and what is credited into the bank account. In respect of salaried employment, Appendix FM-SE requires an applicant to produce payslips, a letter from the employer and personal bank statements corresponding to the same period as the payslips showing that the salary has been paid into an account in the name of the applicant and their partner jointly. The production of those documents in support of an application provides an audit trail that an applicant is employed as claimed, at a salary that meets the income threshold and that the payment of that salary is corroborated by the payments into the bank account. I can well understand that if an applicant were to claim to be in receipt of a salary but the payments into the applicant's bank account were either in excess of the claimed salary, or below the claimed salary, some explanation would be called for. A Judge might legitimately in such a case conclude that he or she cannot be satisfied that the income shown on the bank accounts is that derived from the employment claimed.

14. The First-tier Tribunal Judge here found at paragraph [24] of her decision:

"24. ...Having added up the total amount shown going into the sponsor's account over the requisite period of time, I am satisfied that the indicated salary is paid into his account albeit if not always in the regular amounts shown on the pay slips. I find that the bank statements do, overall, accord with the pay slips and corroborate the salary."

15. That is a factual finding that is not challenged by the respondent and one that was plainly open to the Judge on the evidence. In my judgement, the Judge was

neither suggesting that there is some form of discretion, nor did she find that the income into the bank account almost met the income requirements. She found, having added up the total amount going into the sponsor's bank account over the requisite period that the salary was paid into the sponsor's account, albeit if not always in the regular amounts shown on the payslips.

16. In my judgement it was open to the Judge on the evidence before her, to find that on a balance of probabilities, the specified evidence has been provided to establish that the earnings are in excess of the required £18,600.
17. It follows that in my judgment, the decision of the First-tier Tribunal discloses no material error of law and the appeal is dismissed.

Notice of Decision

18. The appeal is dismissed and the decision of the First-tier Tribunal shall stand.
19. No anonymity direction is applied for and none is made.

Deputy Upper Tribunal Judge Mandalia

TO THE RESPONDENT
FEE AWARD

The First-tier Tribunal made a fee award of £140.00. I have dismissed the appeal and the fee award made by the First-tier Tribunal stands.

Signed

Date: 8th July 2016

Deputy Upper Tribunal Judge Mandalia