



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: OA/13412/2014

THE IMMIGRATION ACTS

Heard at Field House
On 27th April 2016

Decision sent to parties on
On 18th May 2016

Before

UPPER TRIBUNAL JUDGE GLEESON
DEPUTY UPPER TRIBUNAL JUDGE MAHMOOD

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

SUMERA SHEHARYAAR
(NO ANONYMITY ORDER MADE)

Respondent

Representation:

For the Appellant: Mr Tom Wilding, Home Office Presenting Officer

For the Respondent: Mr Shahzada Sheharyaar (Husband)

DECISION AND REASONS

1. The Secretary of State appeals with permission against the First-tier Tribunal decision allowing the claimant's appeal against refusal by the Entry Clearance Officer in Islamabad of entry clearance for her to join her husband in the United Kingdom as a partner, under paragraph EC-P.1.1. of Appendix FM. The claimant's husband appeared in person before us today and brought with him documents which were not before the Entry Clearance Officer, which tend to show that he earns far more than is necessary to meet the requirements of the Rules. It is common ground that the documents were not before the Entry Clearance Officer when the decision was made.

The new documents

2. The documents produced to the Entry Clearance Officer were copies, not original documents. They were:
 - a P60 end of year certificate showing that the sponsor paid tax on income of £30,000 in the tax year to the end of 5th April 2016;
 - two letters from Fitness Junction Limited confirming salary of £30,000,
 - a set of payslips showing payment of his salary of £30000. The tax appears to have been paid separately to HM Revenue and Customs because it does not show as deducted on the payslips.
 - a letter from HM Revenue and Customs confirming that for the tax year 2013/14 he paid tax on £30,000.

First-tier Tribunal's decision

3. The Entry Clearance Officer in Islamabad refused entry clearance to the claimant on the basis that the requirements of Appendix FM-SE at paragraph 2 were not met. The First-tier Judge said this
 - "10. I conclude that whilst he acknowledges he cannot demonstrate that by the production of bank statements he did provide information from the company's own accountant specifying what his wages were that they were paid and information to demonstrate that he had paid tax on those earnings during the relevant period. I find that he not only has demonstrated that he had the income required well in excess of £18,600 but that he has demonstrated that he continues to do so on the up-to-date evidence supplied relevant to the issue of entry clearance now.
 11. Were it the case that he could not 'strictly' comply with the requirements of the Rules as the actual evidence supplied I would conclude that in these circumstances he having provided entirely reliable evidence from the Revenue as to his earnings over the period and a letter from his accountant to the same effect supplied to the Entry Clearance Officer that this appeal should be allowed under Article 8.
 12. The issue under the Immigration Rules is whether he can supply evidence that there are funds in accordance with the Rules. Whilst he could not supply and would not even now be able to remedy it by providing late bank statements to show those payments because he received everything in cash as was stated by the accountants and his employers and as is reflected in his bank statements he was able to supply since the evidence of the payment to the Revenue of tax on his income from the same employer as demonstrated in the pages noted above. Accordingly, he has met the requirement of the Rules as to his income. That was the only issue raised I conclude therefore that the appeal must be allowed."

Permission to appeal

4. The basis of the Secretary of State's appeal is, first, that the sponsor is not exempt from the financial requirements of the Rules, and the First-tier Tribunal misdirected itself in relying on wages received in cash; and second, that no compelling circumstances engaging Article 8 ECHR were found and that Article 8 had been misapplied.
5. Permission to appeal was granted by Judge Pooler on the basis, so far as relevant, that

"The only issue under the Rules was whether the claimant had shown that her sponsor had earnings in excess of the income threshold. The judge found that the requirements of the Rules were met and alternatively that the appeal should be allowed under Article 8.

4. The grounds refer to the specified evidence to be provided in respect of income received in cash the judge who found that the sponsor could not evidence his income by reference to bank statements arguably misdirected herself as to the requirements of the Rules.
5. It is also arguable that the judge misdirected herself in relation to Article 8 by failing to find the existence of compelling circumstances using Article 8 as a general dispensing power and failing to make a finding as to whether the parties could enjoy family life elsewhere."

Discussion

6. On a proper reading of the decision the Article 8 point falls away. The judge very clearly made her decision only within the Rules and the glancing reference to Article 8 is not operative in her decision to allow the appeal. We need concern ourselves no further with Article 8.
7. We note that the sponsor has done everything he can to show that he does have the income in question: he has stopped receiving his pay in cash, and he told us that it now all goes through his bank account, ever since he discovered the necessity of it at the previous hearing. There should therefore now be no difficulty, if circumstances have not changed, for him to meet the requirements of paragraph 2 of Appendix FM-SE.
8. For the respondent, Mr Wilding stated that on the basis of the documents now produced, if the application were to be made today and there were no further complications, it would be a very straightforward application.
9. As far as the issue under the Immigration Rules is concerned, the sponsor acknowledged before the First-tier Tribunal that he could not meet the specified document requirements at the date of application, the date of decision, or the date of hearing in the First-tier Tribunal. In those circumstances the First-tier Tribunal Judge erred in law in accepting alternative evidence at the hearing.

10. The sponsor is extremely keen to have his wife join him in the United Kingdom: the best course is for him to make another application as soon as possible and this time ensure that the requirements of the Rules are met.

Decision

The Secretary of State's appeal is allowed. There is a material error of law in the First-tier Tribunal's decision. We substitute a decision dismissing the claimant's appeal.

Anonymity

The First-tier Tribunal made no order pursuant to Rule 13 of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014. We have not been asked to make any anonymity order under Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 and we do not consider that there is any necessity to do so.

Signed
Upper Tribunal Judge Gleeson

Date: 6 May 2016