



IAC-FH-CK-VI

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

Appeal Number: OA/14407/2014

THE IMMIGRATION ACTS

Heard at Field House
On 23 December 2015

Decision & Reasons Promulgated
On 19 January 2016

Before

DEPUTY UPPER TRIBUNAL JUDGE HILL QC

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**MRS AYESHA NADEEM
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: Mr E Tufan, Home Office Presenting Officer

For the Respondent: Mr S Shah, Legal Representative, 786 Law Associates

DECISION AND REASONS

1. This is an appeal brought by the Secretary of State for the Home Department against a decision dated 6 July 2015 in respect of a hearing before First-tier Tribunal Judge Harris on 17 June 2015. The date of promulgation does not appear on the face of the determination, but this is immaterial for present purposes. The appeal relates to a refusal by the Entry Clearance Officer in Islamabad to grant entry clearance in relation to the applicant (as I shall refer to her, albeit she is the respondent to the current appeal) on the basis that matters under Appendix FM-SE were not met.

2. The appeal was determined in favour of the applicant, largely on the basis of evidence relating to the minimum income threshold. What the First-tier Tribunal Judge said is this at paragraph 18:

“It would appear that it was with a view to considering paragraph D(d) that the [entry clearance officer] in the notice of decision turned to look at P60s of the sponsor submitted by the appellant prior to the date of decision. This includes the P60 relating to 2013/2014 indicating a gross salary of £25,569.”

3. The decision continues at paragraph 19:

“Where I disagree with the approach of the [entry clearance officer] is that the P60 relating to 2013/2014 indicating a gross salary of £25,569 could not be taken into account. The document was indeed issued after the application was sent but I am satisfied that, as it covers the period in the financial year relied upon prior to the date upon which the application was made, it can be treated as relevant and taken into account as genuine evidence supporting that the appellant was receiving on a weekly basis an income totalling over the level of £18,600 required.”

4. I have had it drawn to my attention and I accept that in a letter dated 16 June 2014 sent by the British High Commission in Islamabad the applicant in this matter was expressly invited to submit further documentation regarding the income threshold requirement. In those circumstances, the invitation having been given to submit evidence, it strikes me as improper and contrary to the legitimate expectation which that letter engendered for the refusal letter to include a statement to the effect that “the P60 for the tax year to April 2014 postdates your visa application so I cannot take it into consideration”. Appendix FM-SE contains the following at A(f):

‘Before making a decision under Appendix FM or this Appendix, the decision-maker may contact the applicant or their representative in writing or otherwise to request further information or documents. The material requested must be received at the address specified in the request within a reasonable timescale specified in the request.’

It would render this provision entirely meaningless were information to be specifically requested and thereafter supplied only then to be disregarded by an entry clearance officer on the ground that they were not submitted with the application. That cannot have been the statutory intent.

5. In my assessment the First-tier Tribunal Judge was correct to take a view which differed from that of the Entry Clearance Officer. He properly considered the content and effect of the P60 even though the document was both generated and submitted after the date of the application, since the supply was at the express behest, so it would appear, of the High Commission.
6. It was properly conceded before me on behalf of the Secretary of State that were I to be satisfied that the P60 properly fell to be considered, then the criteria of paragraph D(d) would be met and that the decision of the First-tier Tribunal Judge could not otherwise be impugned.

7. For the reasons set out above, I am satisfied that the First-tier Tribunal Judge properly admitted the P60 and took it into consideration. The weight to be afforded to different matters of admissible evidence are entirely for the judge to determine. There is therefore no error of law on the part of the First-tier Tribunal Judge in either his reasoning or his conclusion.

Notice of Decision

Appeal dismissed.

No anonymity direction is made.

Signed *Mark Hill*

Date 18 January 2016

Deputy Upper Tribunal Judge Hill QC

TO THE RESPONDENT
FEE AWARD

I have dismissed the appeal and therefore there can be no fee award.

Signed *Mark Hill*

Date 18 January 2016

Deputy Upper Tribunal Judge Hill QC