



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: OA/15087/2014

THE IMMIGRATION ACTS

Heard at Field House
On 13th April 2016

Decision and Reasons Promulgated
On 29th April 2016

Before

DEPUTY UPPER TRIBUNAL JUDGE RIMINGTON

Between

MRS TAHIRA KHAN

Appellant

and

ENTRY CLEARANCE OFFICER -Islamabad

Respondent

Representation:

For the Appellant: Mr J Dhanji, instructed by Awan Legal Associates
For the Respondent: Mrs Vidyadharan, Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant appeals, with permission, against the decision of First-tier Tribunal dismissing her appeal against the Entry Clearance Officer's decision of 13th November 2014.
2. On 5th May 2014 the appellant made an application for entry clearance for settlement to join her husband Mr Khan. Her application was refused under paragraph EC-P.1.1 of Appendix FM of the Immigration Rules with reference to Appendix FM-SE. It was noted that the appellant's sponsor was not exempt from the financial

requirements and therefore needed to provide documents specified in the Immigration Rules. Bank statements for six months were received but only 3 months of payslips were received.

3. Contrary to the Rules the Entry Clearance Officer emphasised that the appellant had failed to submit her sponsor's wage slips corresponding with the bank statements submitted. This was a requirement of the Rules and consequently the Entry Clearance Officer refused the appeal.
4. The First-tier Tribunal Judge dismissed the appeal and challenge by way of permission to appeal was made on four grounds,
 - (1) that the judge did not understand the evidence given in relation to the missing payslips,
 - (2) the judge did not give reasons for his finding with respect to Appendix FM-SE(1)(k) (that where a gross income cannot be properly evidenced, the net amount will be counted towards the gross requirement). The payslips sent demonstrated an approximate amount and a chart was put forward by Counsel at the First-tier Tribunal demonstrating payments and the respondent could extrapolate the figures to show the gross figure.
 - (3) there was a failure to consider Appendix FM-SE D (the decision maker may contact the appellant in the event of missing documents)
 - (4) there was a failure to apply binding jurisprudence in respect of Article 8
5. At the hearing before me Mr Dhanji confirmed that he wished to proceed on only ground 2 above. The First-tier Tribunal Judge granting permission instructing that with respect to ground 1, a contemporaneous note by counsel of the proceedings be provided and none was forthcoming. This ground was abandoned. Bearing in mind Sultana [2014] UKUT 540 (IAC) he accepted there was no mileage in his pursuing ground 3. Similarly ground 4 was not pursued.
6. Mr Duffy provided the relevant immigration rules as at the date of decision. Those rules state at FM-SE 1(a)(k)

'Where the gross (pre-tax) amount of any income cannot be properly evidenced, the net (post-tax) amount will be counted, including towards a gross income requirement'.
7. Mr Duffy contended that there was no reason why the six months of payslips could not be provided. The emphasis on the rules was 'cannot'. There was no indication, despite evidence being suggested that the Royal Mail had lost documents, that the appellant could not provided evidence of those payslips. The *schedule* of the previous counsel covering the bank statement payments did not cover the requisite period which in fact ran from 24th October 2014. Bank statements from that date were provided and some of the payslips were provided.

8. First, I am not persuaded that the provision within the Immigration Rules covers circumstances such as these. It is clear that payslips were available to the sponsor as he stated in evidence that further payslips had been provided albeit **after** the date of the application. There was no indication that the sponsor could not obtain further payslips from his employer and indeed the sponsor had provided some payslips, albeit not all those required, at the date of application. The particular requirement of FM-SE 1(a)(k) refers to the gross (pre-tax) amount of any income not being properly evidenced thus allowing the net income can be counted. This is a general provision which does not remove the requirement of the provisions at FM-SE 2 (a) with reference to payslips because it was not the case of the sponsor at the date of application that payslips could not be produced merely that some had been lost.
9. Even if this were not the case the judge in his decision states [7] that

'Mr Saini then introduced a separate argument to the effect that where the gross income cannot be evidenced, net income might count towards the requirements under the rules. I do not accept his analysis of the net pay position as coming anywhere near to making up or satisfying the financial requirements that had to be met by the appellant' [7].
10. As Mr Duffy stated the schedule itself was deficient in timing but nonetheless the net amount to be calculated from the said schedule was in fact only £8,642.08 and this was indeed nowhere near enough to satisfy the gross financial requirement of £18,600. There is no requirement for the Entry Clearance Officer to extrapolate and work out the gross income in the way suggested. The Immigration Rules states that it is the net (post tax amount) that would be counted *towards* the gross income requirement; it does not state that the gross amount can be extrapolated from any established or accepted net income.
11. The reasoning is not expansive but adequate and there is no material error of law and the decision shall stand.

Signed

Date 13th April 2016

Deputy Upper Tribunal Judge Rimington