



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/01272/2017

THE IMMIGRATION ACTS

Heard at Field House
On 15 June 2018

Decision & Reasons Promulgated
On 5 July 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE SHERIDAN

Between

ENTRY CLEARANCE OFFICER - UKVS SHEFFIELD

Appellant

and

MR IKENNA AMUDO
(ANONYMITY DIRECTION NOT MADE)

Respondent

Representation:

For the Appellant: Ms Z Kiss, Home Office Presenting Officer
For the Respondent: Ms O Omisore-Amudo, Sponsor

DECISION AND REASONS

1. This is an appeal brought by the Entry Clearance Officer against the decision of First-tier Tribunal Judge Cohen, which was promulgated on 22 November 2017.
2. Judge Cohen allowed the respondent's (hereafter "the claimant's") appeal against the decision of the Entry Clearance Officer to refuse his application for entry clearance as a spouse of a British citizen. The judge allowed the appeal on the basis that the requirements of appendix FM of the Immigration Rules were satisfied.
3. The Entry Clearance Officer argued before the First-tier Tribunal that the claimant had failed to submit bank statements evidencing the income of the sponsor for the requisite 6 month period prior to the date of the application and consequently did not satisfy the requirements of appendix FM-SE.
4. The judge stated at paragraph 7:

“At the appeal I was provided with up-to-date payslips and bank statements including covering the six month period before the date of application.”

At paragraph 13 the judge stated:

“I have additionally been provided with the sponsor’s payslips covering the period June 2016 to date which is well in excess of the six month period which needs to be demonstrated. I find this also meets the appropriate requirements of respect of specified documents as detailed in the Immigration Rules.”

5. The judge concluded at paragraph 17:

“[T]he appellant has met all of the requirements of paragraphs E-ECP.1.1 and E-ECP.3.1 of Appendix FM of the Immigration Rules and I find that the appeal is bound to succeed in respect of human rights as incorporated into the Immigration Rules. I allow the appeal on human rights grounds.”

6. The Entry Clearance Officer raised a single ground of appeal, which is that the judge failed to correctly apply the relevant part of Appendix FM-SE where it is stipulated that the following evidence is required:

“(a) Payslips covering:

- (i) a period of six months prior to the date of application if the person has been employed by their current employer for at least six months (and where paragraph 13(b) of this Appendix does not apply); or
- (ii) any period of salaried employment in the period of twelve months prior to the date of application if the person has been employed by their current employer for less than six months (or at least six 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.”

7. The grounds state that the claimant failed to provide payslips from six months prior to the application being submitted, noting that there was a period between February 2016 and June 2016 during which she was not working and there were no payslips submitted during this period.

8. Before me, Ms Kiss on behalf of the Entry Clearance Officer reiterated the argument made in the grounds. She maintained that this is a simple case of the Rules not being complied with and therefore it was an error for the judge to allow the appeal on the basis that the Rules had been satisfied.

9. The claimant was not represented but the sponsor, Ms Omisore, attended the hearing and made submissions on his behalf. She argued that when the application was made she had been working for four months and she had provided payslips covering that period. She maintained that she had not been contacted for other sources of income and had she been she would have been able to provide further information to the Entry Clearance Officer. She also argued that she had submitted evidence of employment at First Bank and that this showed that the requisite income threshold was made. During the course of the hearing Ms Omisore drew to my attention the bank statements from First Direct and informed me that these had been submitted to the Entry Clearance Officer.

10. Having heard the parties give their submissions, I delivered my decision, which is as follows.
11. At paragraph 7 of the decision the judge stated that the claimant provided payslips and bank statements covering the 6 months before the date of application. However, it is apparent, from reviewing the evidence that was before the Tribunal, that payslips covering the six-month period prior to the application were not submitted. This mistake of fact undermines the judge's finding that the claimant submitted the documents required by appendix FM – SE and amounts to an error of law.
12. At paragraph 13 of the decision the judge found that the claimant submitted payslips covering the period from June 2016 to the date of hearing and thereby met the requirements under the Rules. This is a further error of law as the requirements of the Rules are that payslips up to that date of application are submitted, not up to the date of the hearing. Whilst the later payslips may be relevant to the proportionality assessment under article 8 ECHR, they are irrelevant to the question of whether the claimant has complied with the specific documentary requirements stipulated in the Rules.
13. The two errors of law identified above are material as they undermine the judge's conclusion that the requirements of the Immigration Rules were satisfied, which was the sole basis for the judge allowing the appeal on human rights grounds under article 8 ECHR.
14. In order to remake the decision it will be necessary to consider the claimant's human rights claim under article 8 ECHR. The decision of the First-tier Tribunal does not contain any fact-finding or analysis relevant to assessing article 8. The extent of further fact-finding that will be necessary is such that this is a case which, in my view, should be remitted to the First-tier Tribunal to be heard afresh.

Notice of Decision

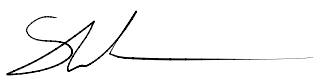
The appeal is allowed.

The decision of the First-tier Tribunal contains a material error of law and is set aside.

The appeal is remitted to the First-tier Tribunal to be heard by a different judge.

No anonymity direction is made.

Signed



Deputy Upper Tribunal Judge Sheridan

Dated: 4 July 2018