



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/04013/2015

THE IMMIGRATION ACTS

Heard at Field House
On 22 December 2017

Decision & Reasons Promulgated
On 05 February 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE MCGEACHY

Between

JAKIR HUSSAIN
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

ENTRY CLEARANCE OFFICER

Respondent

Representation:

For the Appellant: Mr A R Islam, of Counsel of the Chambers of Aminul R Islam
For the Respondent: Ms C Everett, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant appeals with permission against a decision of Judge of the First-tier Tribunal Thorne, promulgated on 3 February 2017, in which he dismissed the appellant's appeal against a decision of the Entry Clearance Officer to refuse him entry clearance to come to Britain as a spouse, on the basis that the sponsor had insufficient income to meet the requirements of the Rules. The judge in paragraph 4 of the determination stated that the Entry Clearance Officer had alleged that the appellant's wife's income was only £15,674.22 per annum rather than the required £18,600. In paragraph 20 of the determination he wrote:

"20. It seems to me that on S's own evidence her gross income for the 12 months prior to the date of application (13/04/15) could not have been in

excess of £18600. She produced a letter from HMRC at p.39 of A's bundle which showed that for the tax year 2014-2015, (which is almost exactly the 12 months' period prior to the date of application) her pay from Amblex Ltd was £12600 and her pay from Ms Hussain Co Ltd was £2130.22. She confirmed that these figures were correct and constituted her entire income during that period. She also produced payslips and bank account statements which supported what she said. It is clear to me therefore that her income was below the requisite threshold."

2. The grounds of appeal argued that the judge had erred when concluding that the appellant did not meet the financial requirements in the Rules because what was required was evidence of the sponsor's income during the six months prior to the application and the issue was whether or not that evidence was consistent with the claim that the sponsor's annual salary would meet the threshold of the financial requirement of £18,600.
3. At the beginning of the hearing Ms Everett and Mr Islam considered the documentary evidence. Once she had gone through the payslips provided cross-referenced to the sponsor's bank statements Ms Everett accepted that the documentary evidence for the six months prior to the date of application showed that the sponsor had an income in excess of £18,600. She therefore conceded that not only had the judge made an error of law in that he had taken into account the sponsor's income for the twelve months prior to the date of application and therefore reach an erroneous figure for her annual income as at the date of application which should have been determined by considering the sponsor's income over the six months running up to the date of application. She therefore accepted that the sponsor met the financial requirements of the Rules. She therefore conceded, as the Entry Clearance Officer had not raised any other issue, that the appeal should be allowed.
4. For the reasons set out above I find that there is material error of law in the determination of the Judge of the First-tier Tribunal and I set aside his decision. As the decision of the ECO is not in accordance with the law and therefore the interference with the family life of the appellant is not proportionate, I re-make the decision allowing this appeal not only on immigration grounds but also on human rights grounds.

Notice of Decision

This human rights appeal is allowed on both immigration and human rights grounds. No anonymity direction is made.

Signed 
Deputy Upper Tribunal Judge McGeachy

Date: 27 January 2018