



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/01941/2018

THE IMMIGRATION ACTS

Heard at: Field House
On: 29 March 2019

Decision and Reasons Promulgated
On: 11 April 2019

Before

DEPUTY UPPER TRIBUNAL JUDGE SUTHERLAND WILLIAMS

Between

MRS SANDEEP KAUR
(anonymity direction not made)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Y Din, Counsel, instructed by Charles Simmons Solicitors

For the Respondent: Ms S Everett, Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal brought on behalf of the appellant, having been given permission by First-tier Tribunal Judge Shimmin on 9 August 2018.
2. In short, this appeal concerns a national of India, born on 5 May 1985, who applied for leave to remain in the UK on the basis of her family life with her British national partner, Harjeet Singh (the sponsor).

3. The matter was listed before First-tier Tribunal Judge James on 18 June 2018. The initial focus of the appeal considered an application under the partner route, and in particular whether the appellant met the financial requirement set out in E-LTRP.3.1 to 3.4 of Appendix FM of the Immigration Rules.
4. The Home Office maintained that the appellant had failed to provide a letter from her employer and bank statements corresponding to the full six months covered by her payslips. Further, it was asserted that the sponsor, as a self-employed person, had failed to provide documentation relating to his income. The Home Office also found there were no insurmountable obstacles to prevent the appellant and her sponsor continuing their family life together outside of the UK; and that as a result, paragraph EX.1 did not apply and that paragraph 276 ADE(1) of the Immigration Rules in relation to private life was not met.
5. At the hearing below, Judge James found that the appellant did not meet the Immigration Rules at the date of the application and that the sponsor had not produced documentation for the last full financial year, which Judge James attributed to ending on 5 April 2018. Further, Judge James found that it would be both reasonable and proportionate for the appellant to leave the UK on a temporary basis.
6. In granting permission to appeal, First-tier Tribunal Judge Shimmin stated that it was arguable that the approach taken by the judge to the evidence in terms of compliance with the Immigration Rules was inadequate and incomplete and may amount to a material error of law.
7. It is against that background that this matter was listed before me.
8. I can short-cut matters to the following extent: the parties had briefly discussed this matter prior to the hearing before me and there was a degree of consensus about the way forward.
9. The judge at first-instance had made a number of findings of fact that neither I nor the parties sought to go behind:
 - i. The respondent (the Home Office) accepted that the appellant was in a genuine and subsisting relationship with the sponsor (para 3);
 - ii. Both parties accept that the threshold figure for income is £18,600 (refusal letter, dated 14 September 2017), through a combination of the appellant's income and her partner's self-employed income;
 - iii. The respondent took no issue with the establishment of family life (para 11);
 - iv. The appellant had an income in excess of £5000 in the tax year 2016/17 (para 14) and £6216 in the tax year 2017/18 (para 19). (The respondent conceded at the hearing below that the appellant had provided sufficient documentation for her income to be accepted as part of the financial requirement during the 6 months prior to the hearing (para 6 of Judge James's decision));
 - v. The only item identified as missing at the First-tier stage was the sponsors accounts up to 5 April 2018 (para 20).

10. The focus before me was on section 7 of Appendix FM-SE, which outlines the documentation required to evidence self-employed income as a sole trader, (set out in full at page 4 of the reasons for refusal letter within the bundle). In particular, it states:

'7. In respect of self-employment in the UK as a partner, as a sole trader or in a franchise all of the following must be provided:

- (a) Evidence of the amount of tax payable, paid and unpaid for the last full financial year.
- (b) The following documents for the last full financial year, or for the last two such years (where those documents show the necessary level of gross profit as an average of those two years):
 - (i) annual self-assessment tax return to HMRC (a copy or print-out); and
 - (ii) Statement of Account (SA300 or SA302).'

While section 7 requires a range of evidence to be provided, it was accepted by the parties that the central evidence required in this appeal related to the verified amount of income for 'the last full financial year' – Judge James having found that was missing.

11. This gave rise to the question of what was the last full financial year? Both parties accepted for the purposes of the proceedings before me that the application had been made in March 2017 and the reasons for refusal letter was dated 14 September 2017. The last full financial year prior to that was the April 2016-April 2017 tax year.

12. In relation to that tax year, Judge James had found that the sponsors claimed income on his tax return from self-employment was £16,300 and 'this figure is supported by professionally prepared accounts by chartered accountants' (para 20). The judge was also satisfied that the sponsors copy bank statements for the period March 2015 to June 2018 has been provided.

13. The cause of concern for the judge below appears to have been that evidence of the sponsor's income for the period after April 2017 had not been provided and therefore not for 'the last full financial year ending on 5 April 2018'.

14. I am less than satisfied that that was the correct approach to take, and the parties concurred with that view. The decision appealed against was made on 14 September 2017 and it was against that decision that this appeal proceeded. There was no reference in the decision letter to any requirement to produce accounts for the financial year ending on 5 April 2018. Nor could there have been. That financial year had not yet been reached and in the view of the appellant's accountants, '...the tax return ending 5 April 2018 is not officially due until 31 January 2019'.

15. Both parties were content for me to approach this appeal by reference to the last full financial year as being the one ending April 2017, and adopt the judge's findings in relation to the same.

16. That being so, the judge materially misdirected themselves in relation to the law. I am satisfied that the sponsor's income was £16,300 for the relevant period and the appellant's income was £5214.12 (per her P60 tax return for 5 April 2017).

17. The £18,600 income threshold is therefore satisfied and was satisfied at the time of the tribunal hearing. As a result, the appellant fulfils the requirements of E-LTRP.3.1 to E-LTRP 3.4 of Appendix FM of the Immigration Rules, (the relationship, immigration status and language eligibility requirements having already been met).

18. I do not need to go further. The parties accepted the position.

NOTICE OF DECISION

19. The decision of the First-tier Tribunal is in error of law and is set aside.

20. I remake the decision. For the reasons set out herein, the appeal is allowed.

Signed

A handwritten signature in black ink, appearing to read 'J Sutherland Williams', written over a horizontal line.

Date: 9 April 2019

Deputy Upper Tribunal Judge Sutherland Williams