



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/10333/2019 (V)

THE IMMIGRATION ACTS

Heard at Cardiff Civil Justice Centre
Remotely by Skype for Business
On 14 January 2021

Decision & Reasons Promulgated
On 27 January 2021

Before

UPPER TRIBUNAL JUDGE GRUBB

Between

ENTRY CLEARANCE OFFICER, SHEFFIELD

Appellant

and

YASMIN TARIQ

Respondent

Representation:

For the Appellant: Mr C Howells, Senior Home Office Presenting Officer
For the Respondent: Ms A Hashmi instructed by Kingswell Watts, Solicitors

DECISION AND REASONS

Introduction

1. Although this is an appeal by the Entry Clearance Officer (“ECO”), for convenience I will refer to the parties as they were in the First-tier Tribunal.
2. This is the determination of the Upper Tribunal re-making the decision following the setting aside of the First-tier Tribunal’s decision in my error of law decision sent on

30 September 2020. In setting out below the background and the appeal proceedings, I have borrowed text from my earlier determination.

Background

3. The appellant is a citizen of Pakistan. On 8 March 2019, she made an application for entry clearance to join her husband, Mr Tariq Bashir, a British Citizen in the United Kingdom under the 'partner' rule (Section EC-P) in Appendix FM of the Immigration Rules (HC 395 as amended). On 24 May 2019, the ECO refused the appellant's application.
4. The ECO was satisfied that the appellant met all the requirements of the Rules, including the eligibility, suitability and English language requirements, apart from one. The ECO was not satisfied that the appellant met the financial requirements in E-ECP.3.1. to 3.4. The ECO was not satisfied that the appellant had established, by the specified evidence set out in Appendix FM-SE, that her husband, the sponsor, had a gross income of at least £18,600 per annum as required by E-ECP.3.1. The ECO was not satisfied that the appellant had provided pay slips or bank statements covering a period of six months prior to the application with the most recent falling within 28 days of the date of application as required by para 2 of Appendix FM-SE. The ECO concluded that the most recent pay slip was dated December 2018 and the most recent bank statement was dated 11 December 2018. In addition, the ECO was not satisfied that the appellant had provided the required letter from the sponsor's employer setting out his employment details, including his gross annual salary. For those reasons, the ECO refused the appellant's application for entry clearance.
5. The application was reviewed by the Entry Clearance Manager ("ECM") and on 8 October 2019, the ECM maintained the ECO's refusal of entry clearance. The ECM maintained the decision but on a somewhat different basis. The ECM accepted that there were pay slips between 30 April 2018 and 28 February 2019 which, therefore, covered the six month period prior to the date of application and the final one of which fell within 28 days of that application. Nevertheless, the ECM concluded that the bank statements did not meet the requirements of the Rules and there was still a failure to provide the required letter of support from the sponsor's employer.
6. The ECM's reasons were as follows:

"It is noted that the appellant has supplied the sponsor's pay slips from 30/04/2018 to 28/02/2019 and bank statements (Yorkshire Bank account ending []) for the same period. However, this does not appear to be the bank account that the sponsor's wages are being paid into. The sponsor is moving his monthly wages from HSBC account (account ending []) between 1 and 2 weeks after being paid.
The appellant has also failed to provide:

 - (b) A letter from the employer(s) who issued the pay slips at paragraph 2(a) confirming
 - (i) the person's employment and gross annual salary;
 - (ii) the length of their employment;
 - (iii) the period over which they have been or were paid the level of salary relied upon in the application; and
 - (iv) the type of employment (permanent, fixed-term contract or agency)".
7. As a consequence, the ECM upheld the ECO's refusal.

The Appeal to the First-tier Tribunal

8. The appellant appealed. Judge Foudy first considered whether the appellant met the requirements of the Rules as a partner and, in particular, the financial requirements.
9. At paras 6-7, Judge Foudy gave her reasons for concluding that the appellant did meet the financial requirements of the Rules:
 - “6. The Respondent does not accept that the Sponsor met the minimum income threshold under Appendix FM of the Immigration Rules as she found that he had not provided the specified pay slips and bank statements with the application to prove her income.
 7. The decision is clearly wrong as the specified pay slips and bank statements were enclosed in the Respondent’s own bundle of documents as ones attached to the application. It would appear that they were overlooked by the decision-maker”.
10. Having concluded that the appellant met the requirements of the Rules, the judge went on to allow the appeal under Art 8, applying the approach of the Court of Appeal in TZ (Pakistan) and Another v SSHD [2018] EWCA Civ 1109, that as the requirements of the Rules were met it was a disproportionate interference with the appellant’s (and sponsor’s) family life to refuse to grant the appellant entry clearance to join the sponsor in the UK.

The Appeal to the Upper Tribunal

11. The ECO sought permission to appeal to the Upper Tribunal on the basis that the judge failed to give anxious scrutiny to the appeal, in particular the ECO’s reasoning in relation to the pay slips and bank statements and whether the appellant had provided the correct documents.
12. On 24 April 2020, the First-tier Tribunal (Judge O’Keeffe) granted the ECO permission to appeal essentially on the ground that:
 - “The judge has given no specific reasons for finding that the documents required by Appendix FM-SE had been provided in circumstances where the respondent asserted the documents provided to her were not the correct documents”.
13. Following directions from the UT seeking, in the light of the Covid-19 crisis, the parties’ views, inter alia, on whether it was appropriate that the error of law issue should be decided without a hearing, the ECO made written submissions on 23 June 2020 in line with the grounds of appeal. No objection was raised to the error of law issue being determined without a hearing. The appellant and her legal representatives made no submissions in response to those directions.
14. In the light of the parties’ submissions, and having regard to the interests of justice and the overriding objective of determining the appeal justly and fairly and the nature of the legal issues raised, I determined that it was in the interests of justice to

determine the error of law issue without a hearing under rule 34 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/2698 as amended) and para 4 of the *Amended General Pilot Practice Directions: Contingency Arrangements in the First-tier Tribunal and the Upper Tribunal* (14 September 2020) issued by (then) Vice Senior President (and now) Senior President of Tribunals, the Rt. Hon. Sir Keith Lindblom.

15. In my determination sent on 30 September 2020, I concluded that the judge had materially erred in law and set aside her decision. I decided that the judge had overlooked the ECM's reasons for upholding the ECO's refusal and had, instead, allowed the appeal on the basis that the ECO's reasons were not sustainable on the evidence. The judge erred by failing to make any findings upon the actual issues under the Rules which were 'live' following the ECM's decision. I adjourned the appeal for a resumed remote hearing to be listed so that the decision could be re-made.
16. The resumed hearing was listed on 14 January 2021. I was based in the Cardiff Civil Justice Centre and Ms Hashmi, who represented the appellant, joined the hearing by Skype for Business. Mr Howells, who represented the respondent, due to technical difficulties was content to join the hearing by phone. The sponsor, who was in Pakistan, joined the hearing by Skype.
17. At the outset of the hearing, I raised with the representatives that I had determined the error of law issues under rule 34 and invited submissions on the impact, if any, of the decision in R(JCWI) v President of UTIAC and another [2020] EWHC 3103 (Admin). Ms Hashmi and Mr Howells both indicated that they were content that my error of law decision should stand and that I should re-make the decision on the basis of the evidence.

The Applicable Rules

18. The relevant financial requirement which the appellant had to establish is set out in para E-ECP.3.1. of Appendix FM of the Rules as follows:

"The applicant must provide specified evidence, from the sources listed in paragraph E-ECP.3.2., of -

(a) a specified gross income of at least -

(i) £18,600;

...."

19. In order to establish the required income, which in this case arises from the sponsor's employment, para 2 of Appendix FM-SE sets out the documents which must be provided in order to establish that income - the "specified evidence". So far as relevant it provides as follows:

"2. In respect of salaried employment in the UK ..., all of the following evidence must be provided:

- (a) Pay slips 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;
 -
- (b) A letter from the employer(s) who issued the pay slips at paragraph 2(a) confirming:
 - (i) the person's employment and gross annual salary;
 - (ii) the length of their employment;
 - (iii) the period over which they have been or were paid the level of salary relied upon in the application; and
 - (iv) the type of employment (permanent, fixed-term contract or agency).
- (c) Personal bank statements corresponding to the period(s) as the pay slips at paragraph 2(a), showing that the salary is being paid into an account in the name of the person or in the name of the person and their partner jointly".

20. Paragraph 1(l) of Appendix FM-SE provides that:

"Where this Appendix requires the applicant to provide specified evidence relating to a period which ends with the application, that evidence, or the more recently dated part of it, must be dated no earlier than 28 days before the date of application".

Discussion

21. The representatives agreed that there were two outstanding issues under the Rules:

- a) Whether the appellant had provided the required letter from the sponsor's employer containing the specified information as required by para 2(b) of Appendix FM-SE; and
- b) Whether the appellant had provided the required person bank statements corresponding to, and showing, the sponsor's salary being paid in as set out in his payslips as required by para 2(c) of Appendix FM-SE.

22. As regards (a), Mr Howells accepted that the letter from the sponsor's employer dated 28 February 2019 in the appellant's bundle (at p.44) met the requirement of Appendix FM-SE. Also, on the respondent's database was an equivalent letter dated 30 October 2018. Mr Howells accepted that the requirement in para 2(b) was met.

23. As regards (b), Mr Howells accepted that the bank statements from the Yorkshire Bank submitted by the sponsor appeared to show the payment of his salary into that account corresponding to the required payslips that had been submitted. He acknowledged that it was not clear on what basis the ECM had taken the view that these statements showed a payment in of the appellant's salary from an HSBC account.

24. To deal with this issue, the appellant briefly gave oral evidence. He said that he did not have an HSBC account; only one with the Yorkshire Bank. He had no idea why the ECM had referred to an HSBC account. His salary was paid into his Yorkshire Bank account.
25. Mr Howells did not cross-examine the sponsor and, at the conclusion of the sponsor's evidence in chief, Mr Howells indicated that he accepted the sponsor's evidence.
26. As a consequence, Mr Howells accepted that the appellant had provided the necessary bank statements showing payments into his Yorkshire Bank account of his salary corresponding to the required payslips and so the appellant met the requirements of para 2(c).
27. No other matter now being in dispute, Mr Howells accepted that the appellant met all the requirements for entry clearance as a 'partner' in Section EC-P of Appendix FM and was entitled to entry clearance as a 'partner'. On this basis, Mr Howells invited me to allow the appeal under Art 8 of the ECHR following the approach in TZ (Pakistan).
28. I am satisfied that the appellant met all the requirements of Appendix FM as a 'partner'. It is not suggested that she does not continue to do so. She is entitled to entry clearance on that basis.
29. Further, as a result, there is no public interest to outweigh the interference with her 'family life' with the sponsor in the UK which results from the refusal decision (TZ (Pakistan) at [34]). The refusal of entry clearance is a disproportionate interference with that family life and is a breach of Art 8 of the ECHR.

Decision

30. As a result of my decision sent on 30 September 2020, the decision of the First-tier Tribunal to allow the appellant's appeal involved the making of an error of law and that decision was set aside.
31. For the reasons I have given, I re-make the decision allowing the appeal under Art 8 of the ECHR.

Signed

Andrew Grubb

Judge of the Upper Tribunal
14 January 2021

TO THE RESPONDENT
FEE AWARD

The appellant having succeeded in her appeal on the evidence before the FtT, I make a fee award in respect of any fee paid or payable.

Signed

Andrew Grubb

Judge of the Upper Tribunal
14 January 2021