



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: OA/03025/2015

THE IMMIGRATION ACTS

Heard at Birmingham

On 7 March 2017

**Decision & Reasons
Promulgated
On 19 April 2017**

Before

UPPER TRIBUNAL JUDGE CLIVE LANE

Between

**ALMAS BEGUM
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DECISION AND REASONS

1. The appellant, Almas Begum, was born on 1 January 1967 and is a female citizen of Pakistan. She applied for entry clearance to the United Kingdom as the spouse of Abdul Wahid (hereafter referred to as the sponsor) who is a British citizen. By a decision dated 13 January 2015, the Entry Clearance Officer refused her application. She appealed to the First-tier Tribunal (Judge Robertson) which, in a decision promulgated on 4 March 2016 dismissed the appeal. The appellant now appeals, with permission, to the Upper Tribunal.
2. The sole ground of refusal of entry clearance concerned Appendix FM, paragraph E-ECP3.3:

The requirements to be met under this paragraph are-

- (a) the applicant's partner must be receiving one or more of the following -
- (i) disability living allowance;
 - (ii) severe disablement allowance;
 - (iii) industrial injury disablement benefit;
 - (iv) attendance allowance;
 - (v) carer's allowance;
 - (vi) personal independence payment;
 - (vii) Armed Forces Independence Payment or Guaranteed Income Payment under the Armed Forces Compensation Scheme;
 - (viii) Constant Attendance Allowance, Mobility Supplement or War Disablement Pension under the War Pensions Scheme; or
 - (ix) Police Injury Pension; and
- (b) the applicant must provide evidence that their partner is able to maintain and accommodate themselves, the applicant and any dependants adequately in the UK without recourse to public funds.

3. The evidence required to prove salaried employment in accordance with the Rules is detailed in Appendix FM-SE a(1) and a(2):

2. In respect of salaried employment in the UK (except where paragraph 9 applies), all of the following evidence must be provided:

(a) Payslips covering:

(i) a period of 6 months prior to the date of application if the person has been employed by their current employer for at least 6 months (and where paragraph 13(b) of this Appendix does not apply); or

(ii) any period of salaried employment in the period of 12 months prior to the date of application if the person has been employed by their current employer for less than 6 months (or at least 6 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.

4. At [17-18], Judge Robertson wrote:

17. In this case the sponsor has not provided all the documents required. Particularly, the sponsor had not provided, as required under paragraph 2(a)(i) namely pay slips for a period of six months prior to the application. In making the finding I accept the sponsor was employed by F & I Solutions from November 2013. I also accept that he took unpaid leave for the month of March 2014.

18. I cannot accept Mr Vokes's submission that as the Rules do not specify that pay slips are consecutive, by providing the February pay slip the Rules have been met. The purpose of the Rules and the evidential requirements is to ensure that a sponsor is financially able to support the appellant upon entry to the UK. When the application is based upon a sponsor having been employed for more than six months I consider that evidence of any random pay slips prior to the application would not serve that purpose. I find that consecutive pay slips are required for the six months prior to the application to evidence income throughout that period. Although [the sponsor] subsequently provided a pay slip for March 2014 it showed a nil income. [The sponsor] therefore failed to evidence payment through the six months prior to the application. I therefore conclude that the application does not meet the requirements of the Immigration Rules.
5. The grounds point out that the appellant had taken unpaid leave for March 2014. This was acknowledged by Judge Robertson [17]. The grounds also acknowledge that,

the wage slips can only span the immediate six month period before the application and it is accepted as wrong to suggest otherwise. It is further accepted that a wage slip not provided shows that any monies earned cannot be taken into account. However it is submitted that it is not necessary for a sponsor to provide a wage slip *for each and every month of the six month period showing earnings*. The pay slips to be taken into account only have to cover the period. If the sponsor can satisfy the financial requirements over twelve months - because it is necessary to extrapolate from the six month period proved, then the appellant is entitled to enter, as in the present case.
6. Granting permission, Upper Tribunal Judge Hanson wrote:

There is clearly a divergence of views in relation to the correct interpretation of Appendix FM-SE(2)(a)(i). Permission can be granted to appeal to the Upper Tribunal if there is an arguable error of law that may be material to the decision under challenge or if the case raises an issue that warrants further consideration by the Upper Tribunal. A case in which there is an arguable confusion in the exact meaning/impact of relevant legal provisions is one such situation. On that basis, permission is granted.
7. The preamble to Appendix FM-SE provides:

This Appendix sets out the specified evidence applicants need to provide to meet the requirements of Rules contained in Appendix FM ...
8. Paragraph 2 provides that,

in respect of salaried employment in the UK ... all of the following evidence must be provided.
9. It is also provided that paragraph 2(a)(i) shall not apply where paragraph 13(b) of the Appendix applies. Paragraph 13(b) does not apply in the present appellant's case because the sponsor did not claim to have been employed by their current employer for less than six months. Paragraph

13 concerns the calculation of gross annual income under Appendix FM for the purpose of deciding whether an applicant and sponsor have a gross annual income equal to or exceeding the level required by the Appendix. Paragraph 13(a) provides:

Where the person is in salaried employment in the UK at the date of application, has been employed by their current employer for at least six months and has been paid throughout the period of six months prior to the date of application at a level of gross annual salary which equals or exceeds the level required in paragraphs 13(a)(i) their gross income will be (where paragraph 13(b) does not apply) the total of ... the level of gross annual salary relied upon in the application.

10. For the purpose of calculating the gross annual income, therefore, for the present appellant and the sponsor the correct paragraph is paragraph 13(a). Unlike paragraph 2(a)(i), paragraph 13(a) leaves no doubt whatever as to the period by reference to which her gross annual salary will be calculated, that is “the period of six months prior to the date of application ...” I find that the use of the definite article (*‘the period’*) excludes the possibility of any non-continuous period prior to the making of the application.
11. The sponsor in this case took unpaid holiday for February 2014 and therefore did not receive a wage payment for that month although he claims to have remained employed throughout. The appellant applied for entry clearance on 30 September 2014. There seems to be some doubt as to whether the month of unpaid holiday taken by the sponsor was February or March 2014 (Judge Robertson refers to March). In any event, it is the appellant’s case (as it was before the First-tier Tribunal) that it is

not necessary for a sponsor to provide a wage slip for each and every month of the six month period showing earnings. The pay slips to be taken into account only have to cover the period. If the sponsor can satisfy the financial requirement over twelve months - because it is necessary to extrapolate from the six month period proved, then the appellant is entitled to enter as in the present case. [Paragraph 2 of the grounds of appeal].

To complicate matters, it appears that the pay slip showing a nil income for the month of unpaid leave was not supplied by the appellant/sponsor until after the application had been made. Judge Robertson, noting the submissions of the Presenting Officer before her, recorded that,

Mr Swaby [the Presenting Officer] submitted that, even if the sponsor’s income meets £18,600 (which he did not concede) documentary evidence is required as set out in Appendix FM-SE. This includes six months consecutive pay slips prior to the date of application which in this case is from March 2014. For the Rules to refer to any months before the application would make no sense. If one pay slip is unpaid then the appellant is unable to show he has been paid throughout the six months prior to the application and cannot meet the criteria. He submitted that five pay slips are insufficient regardless of the income as the calculation is not

based on an average. The pay slips are required to evidence payment throughout the six months.

12. Judge Robertson at [17] recorded that it was agreed by the parties that the sponsor had not provided “all the documents required.” She accepted that the sponsor had been employed by F & I Solutions from November 2013 and she also accepted that he had taken unpaid leave for the months of March 2014. However, she went on to conclude,

I cannot accept Mr Vokes’s submission [Counsel for the appellant before the First-tier Tribunal] that as the Rules do not specify the pay slips are consecutive by providing the February pay slip the Rules have been met. The purpose of the Rules and the evidential requirements is to ensure that a sponsor is financially able to support the appellant upon their entry to the UK. Where the application is based upon a sponsor having been employed for more than six months I consider that evidence of any random pay slips prior to the application would not serve that purpose. I find that consecutive pay slips are required for the six months prior to the application to evidence income throughout that period. Although Mr Wahid [the sponsor] subsequently provided a pay slip for March 2014, it showed a nil income. Mr Wahid therefore failed to evidence payment throughout the six months prior to the application. I therefore conclude that the application does not meet the requirements of the Immigration Rules.

13. The question in the appeal before the Upper Tribunal is whether Judge Robertson’s construction of paragraph 2(a)(i) is correct. I find that her interpretation of the Rule is correct. First, I refer again to paragraph 13 of Appendix FM which provides formulae for calculating gross annual income under the Appendix. Paragraph 13(a) leaves no doubt at all the calculation of gross annual income is made by reference that a person in employment must be paid “throughout the period of six months prior to the date of application at a level of gross annual salary which” equals or exceeds the figure required to satisfy the Immigration Rules (in the case of the present appellant, £18,600). The appellant’s interpretation of the Rules (namely that it is not necessary to provide wage slips for a consecutive period of six months immediately prior to the application) does not sit easily with the provision contained in paragraph 13(a). The use of the words “throughout the period of six months prior to the date of application” undoubtedly supports Judge Robertson’s construction.
14. I am aware that the appellant bases her arguments on paragraph 2(a)(i) and not paragraph 13; however, the whole purpose of supplying wage slips is to provide specified evidence to prove that the appellant can meet the gross annual income requirements of Appendix FM. It is appropriate, therefore, to refer to the provisions for calculating gross annual income in order to interpret paragraph 2(a)(i).
15. Thirdly, I agree with Judge Robertson that paragraph 2(a)(i) concerns the income of a sponsor who has been employed for more than six months prior to the date of application. It does not make sense that the evidence required in the form of pay slips should be for six monthly pay slips for a

period which might stretch back years prior to the application when the requirement to supply the pay slips in the first instance only arises because the sponsor has been in employment in the six months immediately prior to the application.

16. For the reasons I have detailed above, I conclude that Judge Robertson correctly construed and applied paragraph 2(a)(i). She was correct to dismiss the appellant's appeal because the appellant and sponsor had failed to comply with Appendix FM-SE. By doing so, she did not err in law. Accordingly, this appeal is dismissed.

Notice of Decision

17. This appeal is dismissed.
18. No anonymity direction is made.

Signed

Date 1 April 2017

Upper Tribunal Judge Clive Lane

TO THE RESPONDENT **FEE AWARD**

I have dismissed the appeal and therefore there can be no fee award.

Signed

Date 1 April 2017

Upper Tribunal Judge Clive Lane