



UPPER TRIBUNAL  
(IMMIGRATION AND ASYLUM CHAMBER)

APPEAL NUMBER: OA/08103/2013

THE IMMIGRATION ACTS

Heard at: Field House  
On: 11 September 2014  
Prepared: 2 October 2014

Determination Promulgated  
On: 13 October 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE MAILER

Between

ENTRY CLEARANCE OFFICER: PAKISTAN

and

MR RAJA ZESHAN IFTIKHAR  
(NO ANONYMITY DIRECTION MADE)

Appellant

Respondent

Representation

For the Appellant: Mr S Kandola, Senior Home Office Presenting Officer  
For the Respondent: Sponsor present (assisted by her Mackenzie Friend)

DETERMINATION AND REASONS

1. For the sake of convenience I shall refer to the appellant as the "entry clearance officer" and the respondent as "the claimant."
2. The claimant is a national of Pakistan, born on 14<sup>th</sup> August 1983. His appeal against the decision of the respondent dated 22<sup>nd</sup> February 2013 refusing his application for entry clearance as the spouse of a person present and settled in the UK was allowed under the Immigration Rules by First-tier Tribunal Judge Phull in a determination promulgated on 13<sup>th</sup> May 2014. It had been contended on behalf of the entry clearance officer that the claimant had failed to meet the relevant financial requirements under the rules.

3. The Judge found that the couple had a subsisting marriage and that they intended to live together permanently [14].
4. With regard to the financial requirements for entry clearance, the Judge found the sponsor's evidence credible because the documents from Companies House supported her evidence that Gold Flower is a parent company and trades as Hotel Management Services. Gold Flower issues the payslips.
5. The Judge referred to the evidence in the claimant's bundle which included his sponsor's payslips and bank statements for the period 10<sup>th</sup> January 2012 to 10<sup>th</sup> January 2013. She submitted income evidence for both jobs. The Judge considered her gross and net pay from Marks and Spencer and Gold Flower, the latter from 30<sup>th</sup> May 2012 to 20<sup>th</sup> October 2012.
6. The annual gross income is stated on the payslips. He cross referenced the net pay with the credits into the HSBC bank account as per the bank statements. He found that the net income for each month shown on the payslips corresponds to the credits into the bank account.
7. He found on balance that at the date of decision - which he stated to be the relevant date - the sponsor's total gross income from both jobs for the 12 month period was in excess of £19,841.67. He also considered the evidence of savings, noting that the couple had had in excess of £20,000 in savings at the date of decision which he stated was not challenged by the entry clearance officer.
8. He found that the maternity leave resulting in a drop of income started on 16<sup>th</sup> June 2013, after the date of decision. She was in receipt of maternity pay. She submitted documentary evidence that she would recommence her full time job at Marks and Spencer on 22<sup>nd</sup> May 2014 as well as a part time job through the same agency.
9. The Judge accordingly found that the appellant met the maintenance requirement.
10. On 22<sup>nd</sup> July 2014, Upper Tribunal Judge McGeachy granted the entry clearance officer's application for permission to appeal. The reasons were as set out in the grounds of appeal, namely, that as there was a failure in the documentary evidence provided by the sponsor, the appeal should have been dismissed even where that failure was not specifically mentioned in the grounds of refusal. He found that all the grounds of appeal were arguable.
11. Mr Kandola on behalf of the entry clearance officer submitted that the requirements regarding the specified evidence to be provided are comprehensively set out at Appendix FM-SE to the rules. These refer to the types of evidence required, the periods they cover and the format they should be in.

12. He submitted that the First-tier tribunal Judge had no regard to this as is evident from paragraphs 13-19 of the determination which set out the Judge's findings.
13. Whilst some documentation had been submitted, it failed to meet the relevant requirements set out in Appendix FM-SE. Accordingly, the First-tier Judge 'failed to fully engage with' and deal with the issues raised in the reasons for refusal letter regarding the evidence submitted in support of the application.
14. He accordingly erred in law, having failed to comply with the immigration rules and the findings are therefore unsustainable.
15. It is also evident that the Tribunal did not have appropriate regard to the relevant date. For Appendix FM, the significant date is the date of application and the "significant evidence" is from the specified period before that date. The Tribunal has not addressed the relevant evidence from prior to 28<sup>th</sup> November 2012, the date of application as demonstrated at paragraph 16 and 17 of the determination where the Judge found that the evidence submitted demonstrated that the sponsor earned the requisite amount "at the date of decision" which he found to be the relevant date. That also renders the conclusions unsustainable.
16. Accordingly, it is not clear what the sponsor's actual annual gross income was as at the date of application.
17. Further, the bank statements provided ended more than 28 days prior to the date of application. There was a missing payslip for November.
18. Further, the requirements relating to bank statements under Appendix FM-SE had not been met. Paragraph 2 of that appendix, which refers to salaried employment in the UK, sets out the evidence, all of which must be provided. That includes wage slips covering a period of six months prior to the date of application if the applicant has been employed by their current employer for at least six months.
19. Further, a letter from the employer who issued the payslips must be provided with the necessary information. There must also be a signed contract of employment.
20. Finally, it is a requirement that monthly personal bank statements corresponding to the same period(s) as the wage slips showing that the salary has been paid into the account in the name of the person, or in the name of the person and their partner jointly, must also be provided.
21. Mr Kandola submitted that the rule is clear. It must be demonstrated that the salary has been paid into the relevant bank account.
22. The claimant's sponsor has not been able to show that and has produced bank statements in which it is not possible to conclude that payments made to her in cash

by Hotel Management Services are identified or identifiable in the bank statements relating to that relevant period. In addition, the applicant must provide specified evidence from the sources listed of a specified gross annual income of at least £18,600, alone or in combination with specified savings of £16,000 and additional savings of an amount equivalent to 2.5 times the amount which is the difference between the gross annual income from the sources listed in paragraph E-ECP.3.2.(a)-(d) and the total amount required under paragraph E-ECP.3.1(a).

23. Mr Kandola referred to the reasons for refusal with regard to savings. The entry clearance officer used figures actually 'quoted' in the claimant's solicitor's letter identifying a shortfall of £4260. In order to qualify, the claimant and his sponsor required £26,650 in savings in order to meet the financial requirements.
24. The claimant had provided no specified evidence of such savings held by the claimant or his sponsor, continuously for the last six months. That also constituted a basis for refusing the application under paragraph EC-P.1.1(d) of Appendix FM of the rules.
25. The Judge considered the evidence of savings and noted that the couple had in excess of £20,000 in savings at the date of decision.
26. As the sponsor was present with her Mackenzie friend, I explained to her in detail what the entry clearance officer grounds of appeal were. I drew their attention to the relevant passages in the Judge's determination. I am also satisfied that the sponsor understood the nature of the submissions made by Mr Kandola.
27. I also afforded the sponsor an opportunity to ascertain from the documentation before the first-tier Tribunal whether she could demonstrate the correspondence between the payslips from Gold Flower and deposits into her account.
28. I accordingly stood the matter down for some time. On resumption the claimant was not able to draw my attention to payments into her HSBC account apart from from those from Marks and Spencers. Although there are payments of cash from time to time, these are irregular and vary in amounts.
29. I have also considered a document dated 22<sup>nd</sup> March 2013 from the claimant's nominated "non professional representative" containing representations in respect of the appeal. With regard to the financial requirements component of the refusal, the submissions are found at paragraph 3. With regard to the contentions relating to the bank statement being older than 28 days as at the date of the initial application as well as the failure to provide "sufficient evidence" regarding the employment of the sponsor in the UK (paragraph 3.2 and 3.3) the contentions are that her payslips were produced.

30. However, there is no submission made regarding the correspondence of pay as reflected in the sponsor's bank statements. Nor are there any submissions or disputes raised relating to the amount of savings the entry clearance officer alleged to be required.
31. Nor has the sponsor produced signed contracts of employment in accordance with Appendix FM-SE (2)(e). Although not relied on in the reasons for refusal, as noted by Upper Tribunal Judge McGeachy, as there was a failure in the documentary evidence provided by the sponsor, the appeal should have been dismissed even where that failure was not specifically mentioned in the grounds for refusal.

### **Assessment**

32. From the determination it is evident that the Home Office Presenting Officer at the hearing before the first-tier tribunal relied on the reasons set out in the refusal letter [11]. It was specifically asserted that the evidence she produced "does not satisfy that she has the income that is claimed."
33. The First-tier Tribunal Judge has however paid no regard at all to the Appendix FM-SE setting out comprehensively the documentary evidence required.
34. It had been acknowledged by the entry clearance officer that some documentation had been submitted, but that this still did not meet the relevant requirements set out in the appendix. This is clearly set out in the reasons for refusal. In particular, no regard was had to the requirement that the bank statements provided ended on 5<sup>th</sup> October 2012 whereas the application was made on 27<sup>th</sup> November 2012 which was more than the 28 days specified in the rule.
35. Further, the Judge failed to have regard to the fact that, as required under Appendix FM-SE, the claimant had been required to present monthly personal bank statements corresponding to the same period as the sponsor's wage slips showing that her salary had been paid into the account in her name. The failure to engage with the Appendix and to give effect to and apply its requirements as to the evidence that was required to be produced is a material error of law.
36. I accordingly find that the making of the decision involved an error of law for the reasons given. I accordingly set aside the decision and re-make it.
37. The claimant had not provided all the necessary documentation set out in Appendix FM-SE to the rules. That includes, but is not limited to, the failure to produce signed contracts of employment.

**Decisions**

The decision of the First-tier Tribunal Judge involved the making of an error on a point of law. I set aside the decision and re-make it, dismissing the claimant's appeal.

I set aside the fee award that was made.

Signed

Date 2/10/2014

C R Mailer  
Deputy Upper Tribunal Judge