



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/27100/2015

THE IMMIGRATION ACTS

Heard at Field House
On 18 July 2016

Decision & Reasons Promulgated
On 25 July 2016

Before

UPPER TRIBUNAL JUDGE FINCH

Between

MUHAMMAD ADNAN
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Miss P Chandran, Counsel, instructed by Burney Legal Solicitors
For the Respondent: Mr Norton, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant who was born on 12 November 1984 is a national of Pakistan. He entered the United Kingdom as a Tier 4 (General) Student Migrant on 22 March 2011. His visa enabled him to remain until 24 June 2012 and it was subsequently extended in the same category until 15 June 2015.

2. On 31 December 2012 he met his sponsor, who is a British citizen, and their relationship began in January 2013. On 22 December 2014 they married and on 2 April 2015 he applied for leave to remain as her spouse. This was before his previous leave expired. He was refused leave to remain as her spouse on 14 July 2015. He appealed that decision on 27 July 2015 and First-tier Tribunal Judge Manuel dismissed the appeal on 30 October 2015.
3. On 22 April 2016 First-tier Tribunal Judge Page refused the Appellant permission to appeal and said that his application and appeal had been properly considered through the lens of the Immigration Rules. But on 2 June 2016 Upper Tribunal Judge Kebede granted him permission to appeal.
4. In the second paragraph of her grant of permission she said “the assertion in the first ground that there was sufficient specified evidence before the judge to allow the appeal under the Immigration Rules merits further consideration.” It is this first ground which I address.
5. When the Respondent refused the Appellant leave she correctly noted that in order for him to be granted leave to remain as a spouse he had to meet the requirement in paragraph ELTRP.3.1 of Appendix FM to the Immigration Rules, which was he “ must provide specified evidence from the sources listed in paragraph ELTRP3.1 that his sponsor had a gross annual income of at least £18,600.” The specified evidence referred to which is in ELTRP.3.2 includes income from the partner form specified employment.
6. The Appellant also had to show that he had submitted the necessary evidence to meet the evidential Rules contained in Appendix FM-SE to the Immigration Rules. In particular, he had to show that in accordance with A1. 1)(a)(iii) of that Appendix he had to show that the money had been paid into personal bank statements in the name of himself, his partner or both, and in this case it is clear that money derived from his partner’s employment was paid into such accounts.
7. However, the Respondent misdirected herself as to the Immigration Rules when she refused the Appellant leave because at page 2 of the refusal letter she said:

“You have indicated on your application form that your partner has been in full-time employment from January 2015. At the time of your application your partner had only been working for four months and not the required six months. We are therefore unable to take this employment into account when dealing with your application. You therefore fail to meet the above requirement in ELRTP.3.1.”
8. In fact that decision was incorrect because Appendix FM does permit sponsors, who have not been working for six months prior to the application, to put in certain alternative evidence and in particular paragraph A1. 2(ii) of Appendix FM-SE(1) says that an applicant can rely on any period of salaried employment in the period of 12

months prior to the date of application if a person has been employed with their current employer for less than six months,. This is the case here, as by the time of the Appellant’s application that sponsor would have been employed for four months.

9. As the sponsor had not been employed by the same employer for a period of six months or more, the Appellant had to submit additional information. That was in the form of a letter from the employer who issued her payslips. The letter had to show what the person’s employment was, the gross annual salary, the length of their employment, the period over which they were paid the level of salary relied upon and the type of employment i.e. was it permanent, fixed term, contract or agency.
10. The Appellant's bundle which was before the First-tier Tribunal Judge includes a letter from the director of Blee Gold, the company for which the appellant's partner was working and for which payslips were submitted. It says

“I am the director of Blee Gold ... and confirm in writing that Mrs Jenny Leigh James is currently employed as assistant manager paid an annual salary of £19,200 per annum. She started work in January 2015 and she is a permanent employee of Blee Gold. She works 40 hours a week. Should you require any further information please contact me.”

11. It appears to me that that letter which predates the application meets all the requirements of Appendix FM-SE.
12. A1. 2 (c) of Appendix FM goes on to say that she must also submit personal bank statements corresponding to the same period as the payslips showing a sum had been paid into an account in the name of the individual or the name of the person and her partner jointly.
13. I have looked at the evidence which has been submitted and the payslips from Blee Gold correlate to the amounts paid into the necessary bank statements down to the penny.
13. Therefore, I find that First-tier Tribunal Judge Manuel clearly erred in law insofar as he did not apply the Immigration Rules correctly. In particular, it was unclear in paragraphs 11 and 12 of his decision whether he understood that she did not have to have been working for six months because at paragraph 12 he goes on to consider the specified documents at the six months point which was after the application before the decision. He also finds, incorrectly in my view, at paragraph 13 of his determination that the letter I have referred to above does not meet the requirements of the Rules. He also finds, incorrectly in my view, at paragraph 14 that the bank statements do not correlate to the payslips.
14. Therefore for these reasons and because the finding was not in accordance with the Immigration Rules, I find there were errors of law in the decision reached by First-tier Tribunal Judge Manuel which was promulgated on 30 October 2015.

15. There is no need for me to remit this appeal for a re-hearing. I keep the appeal in the Upper Tribunal and consider the merits of the Appellant's appeal against the Respondent's decision to refuse him leave to remain as a spouse.
16. I have reviewed the evidence before me and for the reasons given above when finding an error of law in the First-tier Tribunal's decision; I allow this appeal under the Immigration Rules. .

Notice of Decision

1. I find errors of law in First-tier Tribunal Judge Manuel's decision and set it aside.
2. I keep the appeal in the Upper Tribunal
3. I allow the Appellant's appeal against the decision by the Respondent to refuse him leave under the Immigration Rules.
4. It is not necessary to make an anonymity direction.

Signed

Date: 21 July 2016

Nadine Finch

Upper Tribunal Judge Finch