



**Upper Tribunal
(Immigration and Asylum Chamber)
OA/06375/2014**

Appeal Number:

THE IMMIGRATION ACTS

Heard at Field House
On 14 March 2016

**Decision and
Promulgated
On 4 April 2016**

Reasons

Before

DEPUTY UPPER TRIBUNAL JUDGE DOYLE

Between

**Mrs NAZMA AHMED
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M Hossein (counsel) instructed directly by the appellant

For the Respondent: Mr S Staunton, Senior Home Office Presenting Officer

DECISION AND REASONS

1. I have considered whether any parties require the protection of an anonymity direction. No anonymity direction was made previously in respect of this Appellant. Having considered all the circumstances and evidence I do not consider it necessary to make an anonymity direction.

2. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge Henderson promulgated on 28 August 2015, which dismissed the Appellant's appeal on all grounds.

Background

3. The Appellant was born on 9 January 1992 and is a national of Bangladesh.

4. On 8 April 2014 the Secretary of State refused the Appellant's application for entry clearance as a partner under appendix FM of the Immigration Rules. The respondent focussed on paragraph EC-P.1.1 of the rules.

The Judge's Decision

5. The Appellant appealed to the First-tier Tribunal. First-tier Tribunal Judge Henderson ("the Judge") dismissed the appeal against the Respondent's decision.

6. Grounds of appeal were lodged and, on 28 January 2016, Judge Astle gave permission to appeal stating inter alia

"3. It is apparent from the decision that the judge had available to her documents over and above those remaining on the Tribunals file. In the circumstances it is not possible to determine whether she had regard to all of those submitted. On this basis it is arguable that an error of law was made and so permission is granted. The Appellant will however need to supply to the Upper Tribunal further copies of those previously submitted to have any prospect of succeeding."

The Hearing

7. (a) Mr Hossein, counsel for the appellant, referred me to the respondent's bundle, which was before the First-tier Tribunal. In the bundle there is a letter dated 24th February 2014 from the sponsor's employer. Mr Hossein invited me to read that letter and told me that the letter contained all of the information required by appendix FM-SE of the immigration rules. He told me that the letter of 24 February 2014 was produced with the original application and that the error which the Judge had made is that the Judge failed to take account of the letter of 24 February 2014. Instead, the Judge dwells on a letter from the sponsor's accountants, dated 22 July 2015.

(b) Mr Hossein told me that [35] and [36] of the decision places undue emphasis on letters from the sponsor's accountants, and that had the Judge taken account of the letter of 24th February 2014, the Judge would

have found that the appellant fulfils the requirements of the immigration rules

8. Mr Staunton, for the respondent, conceded that he could see force in the submissions made by Mr Hossein, and confined himself to adopting the terms of the respondent's rule 24 response as his submissions.

Analysis

9. There are two grounds for refusal of the appellant's application. The first relates to an allegation of dishonesty. The Judges findings on that aspect of this case reach their conclusion at [33] & [34]. No appeal is directed against the Judge's findings in relation to that part of the respondent's decision.

10. The focus in this appeal is the second part of the respondent's decision, which relates to the financial requirements of the immigration rules. At [34] the Judge finds that the appellant's sponsor meets the income threshold, but at [35] and [36] the Judge finds that the appellant cannot satisfy the evidential requirements set out in paragraph 2(b) of appendix FM-SE.

11. The Judge's findings at [35] and [36] quite clearly proceed on consideration of two letters from the sponsor's accountant. At [21] and [22] the Judge dwells on the sponsor's contract of employment and HMRC records. The Judge makes findings of fact on the basis of those documents at [24] & [25] of the decision.

12. Nowhere in the decision does the Judge makes reference to the letter from the sponsor's employer dated 24th February 2014. In that letter the sponsor's employer provides the sponsor's national insurance number; the sponsor's tax code; the date of commencement of the sponsor's employment; the sponsor's job title, working hours and degree of permanency of employment; and confirmation of the sponsor's basic salary.

13. It is not disputed that the letter dated 24th February 2014 was before the First-tier Tribunal Judge. It is not disputed that that same letter provides the information required by appendix FM-SE of the immigration rules and fulfils the evidential requirements set out there. It is clear from a straightforward reading of the Judge's decision that the Judge did not take account of the letter from the sponsor's employer dated 24 February 2014.

14. The Judge reached his decision on the basis of a material error of fact. The Judge has made a material error of law because he did not take account of relevant and competent evidence which goes to the central issue to be decided by the First-tier Tribunal. Had the Judge taken account of the sponsor's employers letter of 24th February 2014, then the

conclusions reached by the Judge would have been different. In the simplest terms the Judge's findings at [35] and [36] of the decision could not have been made if the Judge had taken account of all of the documentary evidence which was before him.

15. I therefore find that the Judge's decision is tainted by a material error of law and must be set aside.

16. Although I set aside the Judge's decision I find that there is sufficient material before me to substitute my own decision.

17. There is no criticism of the Judge's findings of fact and his conclusions up to and including [34] of the decision. It is at [35] and [36] that the Judge goes astray. It is now common ground that the documentary evidence placed before the Judge was sufficient to fulfil the requirements of appendix FM-SE of the immigration rules. I have a copy of the sponsor's employers letter dated 24th February 2014 and I find that that letter alone is sufficient to satisfy the requirements of appendix FM-SE so that the appellant produces sufficient evidence to discharge the burden of proving that she fulfils the financial requirements of the immigration rules.

18. The unchallenged finding of the First-tier is that the sponsor meets the income threshold set out in the immigration rules. I find that the appellant fulfils the evidential requirements of the immigration rules. I therefore find that the appellant discharges the burden of proving that she fulfils the requirements of the immigration rules and that the appeal should be allowed under the immigration rules.

19. There is no criticism of the Judge's findings in relation to article 8 ECHR and no part of the appellant's appeal is directed at those findings. For the avoidance of doubt, I find that between [37] and [43] the Judge correctly directs himself in law before concluding, at [43], that the respondent's decision is not a disproportionate interference with the right to respect for family life within the meaning of article 8 ECHR.

20. No appeal is directed at the Judge's findings in relation to the 1950 convention. The Judge's decision to dismiss the appeal on human rights grounds therefore stands; however, the decision in relation to the immigration rules is based on a material error of law and must be set aside. I substitute my own decision allowing the appeal under the immigration rules.

Decision

21. The determination of First Tier Tribunal Judge Henderson promulgated on 28 August 2015 contains a material error of law. I set the decision aside. I substitute the following decision.

22. The appeal is dismissed on article 8 ECHR grounds.

23. The appeal is allowed under the Immigration Rules.

Signed

Date 18 March 2016

Deputy Upper Tribunal Judge Doyle