



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: OA/00977/2013

THE IMMIGRATION ACTS

Heard at Field House
On 23rd January 2014

Determination Promulgated
On 27th January 2014
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Before

UPPER TRIBUNAL JUDGE MARTIN

Between

MR BASSEL SEAF ELDEEN

Appellant

and

ENTRY CLEARANCE OFFICER

Respondent

Representation:

For the Appellant: The Sponsor in person
For the Respondent: Mr N Bramble (Senior Home Office Presenting Officer)

DETERMINATION AND REASONS

1. The Respondent appeals to the Upper Tribunal against a determination of the First-tier Tribunal (Judge Warner) wherein it allowed the Appellant's appeal, on Article 8 grounds, against the Respondent's decision to refuse him leave to enter the UK as a fiancé.

2. For the sake of clarity and continuity I will continue to refer in this determination to the Entry Clearance Officer as the Respondent and Mr Eldeen as the Appellant.
3. The application was made under Appendix FM of the Immigration Rules. The Entry Clearance Officer was not satisfied that the Appellant had submitted the specified documents required to show that he met the financial requirements, in particular to show that the Sponsor had a gross income of at least £18,600 per annum. The Entry Clearance Officer was also not satisfied that the requirements regarding accommodation were met.
4. When the matter came before Judge Warner he noted at paragraph 6 that Counsel for the Appellant accepted at the outset that the Appellant could not meet the requirements of the new Immigration Rules and thus relied solely on Article 8. Unfortunately nowhere in the determination does it explain why the Appellant did not meet the Rules.
5. The judge set out the requirements of the relevant parts of Appendix FM and in particular noted that 6 months payslips were required in relation to salaried employment. Without further explanation the Judge then referred himself to the case of MM & Ors [2013] EWHC 1900 (Admin) and set out the relevant paragraphs of that case in full. He then proceeded to consider Article 8.
6. At paragraph 20 the Judge set out the contents of the Sponsor and witness's statements and at paragraph 21 set out the oral evidence of the Sponsor and her witness, her sister.
7. At paragraph 25 he indicated that he was satisfied that the Sponsor was a credible witness. He found that there was evidence of a genuine and subsisting relationship between the Appellant and Sponsor. More importantly at paragraph 27 the Judge found that at the date of decision the Sponsor held the tenancy of an appropriately sized flat to accommodate herself and the Appellant and at paragraph 29 expressed himself satisfied that at the date of decision the Appellant was employed with an annual salary of £24,000 and had been for the 8 months prior to the decision. That he indicated was confirmed by payslips, bank statements and a contract of employment.
8. I pause at this stage to indicate that neither I nor Mr Bramble were clear as to why, given his findings, Judge Warner did not allow the appeal under the Immigration Rules but rather on Article 8 grounds relying upon the case of MM. The only explanation that we could conceive was that the Sponsor had not produced the relevant documents to establish her salary.
9. The application and grounds to the Upper Tribunal challenge the appeal being allowed on the basis of MM and given the subsequent guidance in Gulshan (Article 8 - new Rules - correct approach) [2013] UKUT 00640 (IAC) I agree the Judge erred. However he also erred fundamentally in failinng to give adequate reasons. If Mr Bramble, a senior Home Office Presenting Officer and I could not understand why the Judge reached the conclusion he did , the lay Appellant and Sponsor could not be expected to. Accordingly, I set aside the determination. However the factual findings

and credibility findings made after hearing oral evidence I preserve. It was agreed that it was appropriate for me to redecide the appeal and that there was no necessity for further evidence.

10. It is clear that with the application to the Entry Clearance the Sponsor had included five months payslips (April to August 2012) together with a letter from her employer indicating the day when she would be paid for September. The application was made before that sixth payslip could be submitted. I was told and I accept on the basis of the Sponsor's evidence to me and the contents of the First-tier Tribunal Judge's determination that the sixth payslip was produced to the First-tier Tribunal.
11. That being the case the Appellant was clearly entitled to succeed under the substantive rules under Appendix FM. Even if she did not, this I find is a case where the Appellant was entitled to succeed in any event under paragraph Ex.1.
12. Ex.1(b) provides that the exception applies if the applicant is in a genuine and subsisting relationship with a partner who is in the UK and a British citizen, settled in the UK or in the UK with refugee leave or humanitarian protection, and there are insurmountable obstacles to family life with that partner continuing outside the UK.
13. I am satisfied, as was the First-tier Tribunal that there is a genuine and subsisting relationship between the Appellant and the Sponsor. Given that the Appellant is a Syrian national, and the Sponsor is British, I find that in the current climate of a brutal civil war in Syria that there are insurmountable obstacles to the couple enjoying family life in Syria. Accordingly, even if they did not meet the requirements of appendix FM otherwise, they are entitled to succeed under the exception.
14. The appeal to the Upper Tribunal by the Respondent is allowed in that the First-tier Tribunal's determination is set aside. I redecide the appeal in the Appellant's favour such that the Appellant's appeal against the Entry Clearance Officer's decision is allowed under the Rules.

Signed

Date 24th January 2014

Upper Tribunal Judge Martin