



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: OA/02337/2013

**THE IMMIGRATION ACTS**

Heard at Field House  
On 23 July 2014

Determination Promulgated  
On 10 October 2014

Before

UPPER TRIBUNAL JUDGE CONWAY

Between

MRS ZUHAL AHMAD ZIA  
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

ENTRY CLEARANCE OFFICER - ISLAMABAD

Respondent

**Representation:**

For the Appellant: Mr Nasim  
For the Respondent: Mr Jarvis

**DETERMINATION AND REASONS**

1. The Appellant is a citizen of Afghanistan born in 1993. She appealed against a decision of the ECO, Islamabad made on 5 November 2012 to refuse her application for settlement as the spouse of Mr Allah Mohammed Musazie (the Sponsor) who is a naturalised British citizen living in London.

2. The application was considered on the basis of the documents submitted and was refused under paragraph EC-P.1.1.(d) of Appendix FM with reference to Appendix FM-SE of the Immigration Rules on the basis that the Appellant had failed to submit with her application specified evidence in relation to the Sponsor's 'self-employment in a limited company based in the UK'.
3. In the Grounds of Appeal it was asserted that the Sponsor, who it is not disputed is a director of 'Big Boyz Pizza Limited' is not a self-employed person but an employee of the company and the application should have been considered on that basis. Wage slips showing that he was earning over the minimum income threshold of £18,600 at the date of decision had been submitted along with the other documents necessary to show employment.
4. Following a hearing at Hatton Cross on 13 January 2014 which was dealt with on submissions, Judge of the First-tier Tribunal Hembrough dismissed the appeal under the Immigration Rules.
5. His findings and reasons are at paragraphs [9] to [16] of his determination.
6. He noted the submission on behalf of the Appellant that the Sponsor as a director of the company was an employee, the company being a separate legal person from the Sponsor. Accordingly, to meet the evidential requirements of Appendix FM he was required to submit the documents detailed at paragraph A.1.2 of Appendix FM-SE in respect of salaried employment in the UK which he had done.
7. The judge also noted the submission on behalf of the Respondent that the Sponsor as the sole director, secretary and shareholder in the company the reality was that he was self-employed for the purposes of the Immigration Rules and was therefore required to submit the documents detailed at paragraph A 1.7 in respect of self-employment in a limited company based in the UK which it was agreed had not been done.
8. The judge, (at [11]) whilst accepting the submission on behalf of the Appellant that in company law terms self-employment in a limited company is a contradiction in terms, considered that in trying to give meaning to the plain wording of the Rules such does not fall to be construed with the same rigour that one might take when considering an Act of Parliament.
9. He continued (at [12]): *'The policy underlying the financial and evidential requirements of Appendix FM is that the Home Secretary has determined that a UK based Sponsor must provide evidence of an income of £18,600 per annum so as to enable him to adequately maintain his spouse. In relation to Sponsors who are engaged in business the Respondent is required to be satisfied that the business is viable and providing a sufficient income to the Sponsor to meet the financial requirements of Appendix FM.'*
10. He noted there were different evidential requirements depending on the Sponsor's work status in the UK.

11. He considered the reality to be that the Sponsor in the present appeal *'is engaged in business on his own account in exactly the sort of scenario contemplated by paragraph 1.7'*. He did not consider that the Respondent's *'inappropriate use of language in referring to him being self-employed in a limited company based in the UK should enable him to subvert the financial or evidential requirements of Appendix FM'*.
12. He concluded:

*'A clear example is found in the instant case. Although it appears that he paid himself a salary of the order of £21,250 out of the company its annual accounts for the period 4 October 2011 to 31 October 2012 showed that it had made a trading loss for the period of £20,372. This sum is almost entirely accounted for by the salary drawn by the Sponsor. The reality therefore is that there was no profit in the business from which to draw a salary. The accounts do not demonstrate that he has an income of £18,300 (sic) per annum. It may be that in common with many businesses the Sponsor has in place arrangements with his bank and/or other third parties to provide financial support for the company and it may well be trading within its agreed financial limits. It may not. This is why additional information is required under paragraph A.1.7'*
13. He concluded that it being accepted that the application was not accompanied by the specified evidence in paragraph A.1.7 the appeal had to be dismissed under the Immigration Rules.
14. The judge went on to consider Article 8 concluding that as the Sponsor's business was at date of decision not making any profit so as to enable him to adequately maintain the Appellant the decision to refuse the application was proportionate to the legitimate aim. If the company was now trading profitably another application could be made.
15. The Appellant sought permission to appeal. This was refused by a judge on 23 April 2014.
16. Application was renewed to the Upper Tribunal which was granted on 30 May 2014.
17. At the error of law hearing before me Mr Nasim for the Appellant submitted that the judge had found that there was no factual dispute in this case. The issue was a narrow one, namely, whether the Sponsor was employed or self-employed. The documentation produced clearly showed him to be an employee. Company law allowed for a director to be an employee. The judge's determination should be set aside and remade by allowing it.
18. Mr Jarvis supported the judge's findings and conclusion. On the evidence before him he was entitled to construe the Rule as he had done. It was clear that the Appellant could not be maintained.
19. In considering this matter as the judge indicated the issue was a narrow one, namely, whether the Sponsor was self-employed, which would require him to submit the

documents specified at paragraph A.1.7 of Appendix FM-SE or employed in which case he needed to submit the documents specified at paragraph A 1.2.

20. The judge was correct to state that *'in strict company law terms self-employment in a limited company is a contradiction in terms'*. However, in my view he was wrong to go on to state that *'the reality is that the Sponsor in the present appeal is engaged in business on his own account in exactly the sort of scenario contemplated by paragraph A 1.7.'* Also, that he did not *'consider that the Respondent's inappropriate use of language in referring to him being self-employed in a limited company based in the UK should enable him to subvert the financial and evidential requirements of Appendix FM'*.
21. In this case in the application form (3.3) it was stated that the Sponsor was in salaried employment as a director, his employer being 'Big Boyz Ltd'. More significantly, documentation was submitted from HMRC which included the employer registration and PAYE reference number. There is also a P60 tax certificate in the Sponsor's name. The form shows the employer's details 'Big Boyz Pizza Ltd' with the employer PAYE reference number. There is also a contract of employment.
22. The Tribunal concluded that because the accounts indicated that he was paid £21,250 and that the same accounts showed a trading loss of around £20,000 this sum almost entirely accounted for by the salary, the reality was that there was no profit in the business to draw a salary and that as such the account did not demonstrate that he has an income of £18,600 a year.
23. The Tribunal also concluded that despite the inappropriate use of language by the Respondent he should not be able to subvert the financial or evidential requirements.
24. In my judgment, the undisputed evidence clearly shows that the limited company, a separate legal person, was employing the Sponsor. The fact that the accounts show that his salary of over £18,600 constituted most of the company's trading loss is irrelevant. It remains his salary just as it would be his salary if there was no trading loss, just as it would have been irrelevant if his salary had been a small fraction of a large trading profit.
25. In my view the Tribunal erred in law in concluding that the requirements to be shown were those of a self-employed person rather than those of an employed person.
26. The decision is set aside to be remade.
27. Mr Jarvis submitted that were I to conclude that the Sponsor was employed it was not clear that he met all the evidential requirements of A 1.2 in that while there was a P60 and wage slips and a contract of employment there was not a letter from the employer who issued the pay slips giving the details set out in A 1.2 (d). I note there are letters from the accountants acting for the limited company. These letters give the required information. I consider that the accountants are clearly the agent of the employer for this purpose and that such fulfils the requirement.

28. The only other concern by Mr Jarvis was A1.2 (f). which requires the production of monthly personal bank statements corresponding to the same periods as the wage slips showing that 'the salary has been paid into the account' in the name of the person. His concern was that the net income was not always shown to be the same as in the wage slips. Whilst there were some discrepancies between the amount of his salary appearing on the pay slips and the amount transferred into the bank and showing on the statements, I accept the explanation that this was solely due to difficulties at the start of the business including finding a trained bookkeeper. That explanation was not challenged. All the bank entries show clearly that the credits are from the company. I conclude that the requirement to show that the 'salary has been paid into an account' is satisfied.
29. The Appellant, through the Sponsor, satisfies the evidential requirements under A 1.2.
30. I conclude that the Appellant satisfies the Immigration Rules.

**Decision**

The decision of the First-tier Tribunal contained a material error of law. That decision is set aside and remade as follows:

The appeal is allowed under the Immigration Rules.

Signed

Date

Upper Tribunal Judge Conway