



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal no: OA 08985, 84-13

**THE IMMIGRATION ACTS**

At **Field House**  
on **25.07.2014**

Decision signed: **28.07.2014**  
sent out: **31.07.2014**

Before:

Upper Tribunal Judge  
**John FREEMAN**

Between:

**THARSINI w/o Kowarthanan & another**

appellants

and

**Entry Clearance Officer, MADRAS**

respondent

**Representation:**

For the appellant: the sponsor, Mr Suntharamoorthy Kowarthanan  
For the respondent: Mrs Rhona Pettersen

**DETERMINATION AND REASONS**

This is an appeal, by the appellant, against the decision of the First-tier Tribunal (Judge Roxane Eban), sitting at Hatton Cross on 17 April, to dismiss a family reunion appeal by the dependent wife, born 24 December 1982, and son, born 20 June 2012, of the sponsor. They are citizens of India, but he is now a British citizen.

2. The date of the decision under appeal was 11 March 2013, and the applications had been made on 12 December 2012; so the judge needed to consider the relevant provisions of the 'new Rules', including those set out in appendix FM-SE. She accepted his evidence that he was paid in cash; but she still needed to consider the requirements of section A1.2. The relevant ones for present purposes appear on the next page, leaving out the details; paragraph 9 refers to income from shares in a limited company, not relevant to the present case:

In respect of salaried employment in the UK (except where paragraph 9 applies), all of the following evidence must be provided:

(a) Payslips covering:

(i) a period of 6 months prior to the date of application ...; or

(ii) ...

(b) A letter from the employer(s) who issued the payslips at paragraph 2(a) confirming:

(i) the person's employment and gross annual salary;

(ii) the length of their employment;

(iii) the period over which they have been or were paid the level of salary relied upon in the application; and

(iv) the type of employment (permanent, fixed-term contract or agency).

(c) Personal bank statements corresponding to the same period(s) as the payslips at paragraph 2(a), showing that the salary has been paid into an account in the name of the person or in the name of the person and their partner jointly.

3. The judge did not consider these requirements at all, though she was not helped by the terms of the refusal notice, which took a different point, under paragraph E-ECP 3.3, as to whether bank statements which did not show any credits as salary could be taken into account. Mrs Pettersen helpfully accepted my suggestion that it was legitimate under the wording of (c) for a person paid in cash to show evidence of that, by way of bank statements which showed he had paid in enough of his salary to meet the financial requirements of the Rules. These, upheld in *MM (Lebanon) & others* [2014] EWCA Civ 985, are presently £18,600 by way of gross salary for each grown-up, with a further sum for each child. This would have been covered by the £22,740 shown in the letter from the appellant's employer before the judge.
4. The judge however simply dealt with the consequences of her finding about the cash payments in these terms: "... the deposits to his bank account represent his net salary after payment of his living expenses including his rent". No further figures or explanations were given, and clearly the judge needed to do more, before allowing the appeal outright, as she did. If her failure to do so made any real difference to the result, then it was a *material* error of law, which required the decision to be re-made.
5. Neither the Home Office grounds of appeal nor the grant of permission referred, as they should have done, to the specific requirements of appendix FM-SE which were said to be relevant. Both referred simply to "a P60 and an employment contract", neither of which is specified under the rests in appendix FM-SE paragraph A1.2 (a), (b) or (c). Since the sponsor was appearing in person, I took steps, with the help of Mrs Pettersen, to see whether he had in fact been able to satisfy those on the evidence before the judge. Mrs Pettersen was prepared to approach the figures in the sponsor's favour in a thoroughly pragmatic way, as will become clear.

6. The appellant and his former solicitors *had* provided
- (a) payslips for the relevant period (May – October 2012), in some cases duplicating each other (of which more later), with
  - (b) a letter from his employer, and
  - (c) bank statements to support them.

The fact that his solicitors had sent in items (a) and (b) after the date of the decision under appeal did not of course matter in an appeal outside the points-based system [PBS].

7. The question before me was how far the payments in shown on the sponsor's bank statements supported his case that he was paid a constant monthly net sum of £1,500, corresponding to the gross figure in his employer's letter. Dealing with them month by month, the position is as follows:

May            There is no problem with this month, except that the payments in put down before me by the sponsor to salary (all but the PayPal credit on the 25<sup>th</sup>) amount to a total of £2,729, far above the £1,500 he (and his pay-slips) said he was getting.

June           Here the relevant amounts paid in amounted to £1,422, near enough the £1,500 the sponsor said he had received to be regarded by Mrs Pettersen as acceptable.

July            This month showed no more than £760, again discounting PayPal. That could not match the £1,500 shown on the appellant's pay-slips, nor even the net monthly equivalent of the £18,600 gross a year (£1,550 a month) required just for the sponsor's wife.

August        The total was £1,660, once again near enough.

September   This was £1,560, to which the same applies.

October       Again, this was £1,590.

8. It follows that the only real problem with the sponsor's evidence was on the month of July; so I asked him to give his explanation for the shortfall between his pay-slips and the bank statement. It is 'pay-slips', because he had produced two of them. The one for July (month 4) at p 13 of his solicitors' bundle before the judge shows he was paid £1,500 in cash, while the one at p 19 for the same period has him paid by cheque. The sponsor's explanation for that was that he was in fact paid in cash throughout the time in question: if a pay-slip had shown a cheque payment, as a number of them did, then that was the responsibility of the company's accountant.
9. Going on to the shortfall in the amount, the sponsor said he had been on holiday for part of that month, and had only been paid a fortnight's holiday pay. The trouble with that explanation is that it did nothing to explain why the pay-slips showed him as having been paid £1,500 net during the month. I cannot regard the pay-slips, showing as they do a regular salary of that amount, as supported by the bank statements produced.

10. Even on the basis that, as the judge accepted, the sponsor had been paid in cash throughout, the purpose of the Rules, as set out in appendix FM-SE, is clearly to require sponsors to produce documentary evidence capable of verifying that the financial requirements are met. I have considered whether the large surplus in May might support the sponsor's claim to have been paid £22,740 gross over the year as a whole; but, once again, it is incompatible with his own case, and his own pay-slips, showing a regular net amount of £1,500.
11. The result is that the judge's failure to deal with the evidential requirements of appendix FM-SE *was* material to the result, and her decision must be re-made, dismissing the appellants' appeal. The sponsor referred to article 8, and to his own hard work in this country, and to the extended separation between him and his wife and son, and the poor conditions in India.
12. I am sorry for them, and the sponsor, being kept apart for longer; but there are no such 'exceptional' or 'compelling' features in the case (see *MF (Nigeria)* [2013] EWCA Civ 1192, and *MM (Lebanon) & others* [2014] EWCA Civ 985) as would require free-standing consideration of article 8, where failure under the Rules has been the consequence of unreliable documents being produced. I do not see why the sponsor should not apply again to bring in his wife and son, so long as he discloses the present refusal, and presents reliable documents, complying with whatever the evidential requirements of the Rules may be by then.

**Home Office appeal allowed**

**Appellants' appeal against refusal of entry clearance dismissed**

A handwritten signature in black ink, consisting of stylized, overlapping loops and a long horizontal stroke at the end.

(a judge of the Upper Tribunal)