



ST
Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: OA/12559/2013
OA/12560/2013

THE IMMIGRATION ACTS

Heard at Columbus House, Newport
On 15th October 2014

Determination Promulgated
On 17th November 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE
HARRIES

Between

ENTRY CLEARANCE OFFICER, BEIJING

And

MRS HUIDAN SUN
MR WEIJIE CHI
(ANONYMITY DIRECTION NOT MADE)

Appellant

Respondents

Representation:

For the Appellant: Mr I Richards, Home Office Presenting Officer
For the Respondents: Mr A Sinfield, Counsel

DECISION AND REASONS

Details of the Parties and Proceedings

1. The first respondent was born on 20th November 1981 and the second respondent, born on 8th March 2003, is her son; they are both citizens of the People's Republic of China. They are referred to hereafter as the claimants. They applied for entry

clearance to the United Kingdom under Appendix FM of the Immigration Rules as the partner and child of the sponsor, Mr Maoming Chi, a person born on 27th October 1997 and living in the United Kingdom. The entry clearance officer (ECO) refused the applications on 9th May 2013 for reasons including failure to show that the financial requirements of the Immigration Rules were met. This aspect of the decision was upheld on review by an entry clearance manager (ECM) on 5th February 2014. The claimants appealed against the refusal before First-tier Tribunal Judge Britton (the Judge) at a hearing on 20th May 2014 attended by the sponsor.

2. The Judge allowed the appeals under the Immigration Rules. Permission was granted, by First-tier Tribunal Judge Frances on 1st July 2014, to the ECO to appeal against the Judge's decision to the Upper Tribunal for the following reasons:

The grounds submit that the Judge failed to give adequate reasons for finding that the appellants satisfied the maintenance requirements of the Rules. The Judge accepted that the Sponsor had repaid the overpayment of his wages, but there was no evidence from his employer that he had done so.

It was accepted by the Sponsor in oral evidence that any overpayment of wages had been reclaimed from his salary. It is arguable that the Judge erred in law in finding that the Sponsor had repaid the overpayment. The grounds are arguable.

3. The matter accordingly came before me to determine whether the making of the decision in the First-tier Tribunal involved the making of an error on a point of law. Mr Richards, for the ECO, relied on the grounds of appeal which he said are brief, to the point and self-explanatory. He referred to the Judge's account of the sponsor's evidence in paragraph 12 of the determination. The sponsor told the Judge that the money he received from his employer was an administrative error; after the revised calculations he has returned the amount that was overpaid to him but "there is no evidence that the money has been reclaimed from his salary".
4. Mr Richards submitted that the Judge erred by then accepting that the employer made a mistake and overpaid the sponsor without giving a reason for this finding. It was a simple matter for the Judge to identify the documents on which he was satisfied that the requirements of the Rules were met, but he failed to do so. Mr Richards submitted that the error of law is as set out in the grounds of appeal and the decision should be set aside and remade.
5. In response Mr Sinfield relied on his skeleton argument as follows. The sole issue on which permission to appeal was granted is whether an accepted overpayment of money to the sponsor has been repaid. However, the repayment of the overpayment is irrelevant to the issue of whether the sponsor met the requirements of the Rules. There is nothing in the Rules or any Home Office policy which makes any reference to overpayment of salary.
6. It was submitted before the Judge, and he accepted, that the sponsor earned in excess of the required sum of £22,400; at paragraph 14 of the determination the Judge explains that he found the sponsor to be earning in excess of this requirement. The

requirement was for the claimants to show an available sum from employment or self-employment with evidence in accordance with Appendix FM-SE, namely payslips, bank statements and an employer's letter. All such documents were provided by the claimants and the requirements of Appendix FM-SE were not just met but exceeded by the evidence relied upon.

7. Mr Sinfield submitted that the Judge carefully considered all the evidence provided, as detailed throughout the determination, and provided adequate reasoning for finding the requirements to be met. The Judge accepted that the overpayment explained the discrepancy between the sources of evidence; the issue of repayment is therefore irrelevant. The Judge made a clear finding that the sponsor has a gross salary of £1,760 every 4 weeks and therefore a gross annual income of £22,800. It is not disputed that the required evidence was provided and there was accordingly no error of law, or any error was not material.
8. Finally, Mr Sinfield submitted that all grounds were adequately considered by the Judge. Nothing in the Rules states that the income received must be shown as the same on the items of evidence as required under Appendix FM-SE. The Judge had to satisfy himself that that the sponsor's earnings were as required by Appendix FM, E-ECP 3.1. and he had done so after discussing the evidence in detail, as well as taking account of the oral evidence. In conclusion Mr Richards submitted that although the Rules required the provision of evidence which has been submitted the documents were challenged and the Judge therefore needed to give reasons for his acceptance of the evidence; clarity is required.
9. Taking account of all the submissions, the grounds of appeal and permission to appeal, I am satisfied, looking at the determination of the Judge as a whole, that his decision did not involve the making of a material error on a point of law. The Judge took careful account of the reasons for refusal set out by the ECO and the detailed review of the decision undertaken by the ECM in the light of the grounds of appeal. The ECM questioned why the discrepancy between the money shown on the payslips and the money paid into the sponsor's account was not highlighted by the parties at the time of the application; he was not satisfied with the explanation about overpayment and repayment of money for this reason.
10. The Judge, however, heard oral evidence from the sponsor which was tested at the hearing before him. That evidence is set out by the Judge in paragraph 12 of the determination. In paragraph 13 of the determination the Judge properly directed himself about the burden and standard of proof and moved directly to his findings in the following paragraph by accepting the evidence that the sponsor's employer made a mistake in the payment of his salary which the sponsor repaid. On any reading of the determination it is evident that the Judge accepted the evidence of the sponsor and placed reliance upon it, as he was entitled to do. The ECM did not have the benefit of such evidence before him to support the grounds of appeal.
11. Having properly directed himself about the burden and standard of proof it was in my view a matter for the Judge to decide whether the evidence before him met that

standard. His decision is not challenged on grounds that the documentary evidence did not come within that specified by Appendix FM-SE; it did. In paragraph 14 of his determination the Judge refers to his reliance on documents which were produced after the date of decision because they were foreseeable. There is nothing in the determination to show that evidence other than that appertaining to the circumstances at the time of the respondent's decision has been taken into account.

12. The reference to there being no evidence that the money had been reclaimed from the sponsor's salary came from the sponsor himself, but that excluded his own clear evidence to that effect. There may have been a lack of supporting evidence by way of documents or otherwise, but there was nonetheless evidence before the Judge directly from the sponsor. He may not have explicitly said so but the judge's findings amount to an acceptance of the sponsor's credibility by relying upon his evidence.
13. The Judge was in my view entitled to come to the clear finding in paragraph 14 of his determination that the sponsor started employment on 23rd June 2012 and had a salary in excess of £22,400. I am satisfied that the reasoning of the Judge is not deficient in the light of his clarity about the issues before him, as set out in paragraphs 3 - 9 of the determination. I find that the Judge reached sustainable conclusions adequately supported with reasons and without material error. The decision does not fall to be set aside and it follows that it therefore stands and this appeal to the Upper Tribunal is dismissed.

Anonymity

The First-tier Tribunal made did not make an anonymity order pursuant to the Rules then in force, specifically Rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

Signed: J Harries

Deputy Upper Tribunal Judge
Date: **15th October 2014**

Fee Award

The position remains that there is no fee award.

Signed: J Harries

Deputy Upper Tribunal Judge
Date: **15th October 2014**