



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/04716/2014

THE IMMIGRATION ACTS

Heard at Field House
On 16 April 2015

Decision and Reasons Promulgated
On 17 April 2015

Before

Deputy Upper Tribunal Judge MANUELL

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

A L

(ANONYMITY DIRECTION MADE)

Respondent

Representation:

For the Appellant: Mr P Duffy, Home Office Presenting Officer

For the Respondents: Mr J Plowright, Counsel (instructed by Lee Vally Solicitors)

DETERMINATION AND REASONS

Introduction

1. The Appellant (the Secretary of State) appealed with permission granted by First-tier Tribunal Judge Lever on 31 December 2014 against the determination of First-tier Tribunal Judge R L Walker who had allowed the Respondent's appeal against refusal of his application to remain as the spouse of a British Citizen under Appendix FM in a decision and reasons promulgated on 7 November 2014.

2. The Respondent is a national of Pakistan, born on 1 January 1988. His immigration history is set out at [2] of Judge Walker's decision. There had been a dispute as to whether or not he had a valid in time appeal to the First-tier Tribunal but as Judge Walker had noted that issue had been resolved in the Respondent's favour by Upper Tribunal Judge Renton: see [21] of the decision.
3. Permission to appeal was granted because it was considered that it was arguable that the judge had erred in law by failing to make any findings as to whether or not the financial requirements of Appendix FM had been satisfied.
4. Standard directions were made by the tribunal, indicating that the appeal would be reheard immediately if a material error of law were found.

Submissions – error of law

5. Mr Duffy for the Appellant relied on the grounds of onwads of appeal and the grant of permission to appeal. He submitted that there remained an underlying issue as to the tribunal's jurisdiction, although he accepted that this had not been raised in any clear terms before the judge. There was no reference in the decision to the financial requirements of Appendix FM and so the decision could not stand in any event.
6. Mr Plowright for the Respondent submitted that the sponsor's financial ability had never been in issue. The specified evidence had been produced with the Respondent's application and that showed that the required amount of £18,600 per year had been comfortably exceeded. It simply had not been an issue. The tribunal's jurisdiction had been resolved by Upper Tribunal Judge Renton and was similarly not an issue before Judge Walker.
7. The tribunal indicated at the conclusion of submissions that it found no material error of law in Judge Walker's decision and reserved its determination which now follows.

No material error of law finding

8. It may be that the Secretary of State has access to material which called the First-tier Tribunal's jurisdiction into question, but the time to have produced such material was in advance of the hearing before Judge Walker, in accordance with the tribunal's standard directions. There had evidently been some confusion over the Respondent's Tier 4 (General) Student Migrant leave, but the judge's record of proceedings shows that no submissions were made on that point to him. It had thus been accepted by the Secretary of State that the First-tier Tribunal had jurisdiction. It is hence far too late for any new material to be introduced on jurisdictional issues, without any proper explanation for the delay and when it appears that any such evidence was in the Secretary of State's possession at all material times. The Secretary of State had the option at the First-tier Tribunal stage of withdrawing her decision in the light of Upper Tribunal Judge Renton's ruling, or indeed to challenge Upper Tribunal Judge

Renton's ruling, but chose not to do so. It would be procedurally unfair to entertain an attempt to reopen that now. Plainly Judge Walker was entitled to proceed as he did.

9. As to the financial requirements of Appendix FM, again the judge's record of proceedings shows that no submissions were made on the point. The decision and reasons reflects that. It was accepted before Judge Walker that the Respondent's sponsor had met the financial requirements. There was no need for the judge to say so. Unfortunately the permission to appeal application must have been made without access to the appeal file. So again there is nothing in the point.
10. The tribunal accordingly finds that there was no material error of law in the decision and reasons and there is no basis for interfering with the judge's decision.

DECISION

The making of the previous decision did not involve the making of a material error on a point of law and stands unchanged

Signed

Dated 17 April 2015

Deputy Upper Tribunal Judge Manuell