



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: OA/00393/2014
OA/00394/2014

THE IMMIGRATION ACTS

Heard at Glasgow
On 17th February 2015

Determination issued
On 20th February 2015

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

ENTRY CLEARANCE OFFICER, ISLAMABAD

Appellant

and

FOUZIA ANWAR &
MOHAMMAD AHMAD
(no anonymity order)

Respondents

Representation:

For the Appellant: Mrs M O'Brien, Senior Home Office Presenting Officer
For the Respondents: Mr A Hussain, Solicitor

DETERMINATION AND REASONS

1. The parties are as described above but are referred to in the rest of this determination as they were in the First-tier Tribunal. The appellants appealed to the First-tier Tribunal against refusal of entry clearance as a wife and child under Appendix FM of the Immigration Rules. The applications were based on the sponsor's claimed gross

income from self-employment in a takeaway food business of £11,405 per annum and claimed employment at £12,000 per annum. The ECO said in each refusal decision:

... the bank statements provided do not satisfactorily reflect the claimed salary, which means I am not satisfied that your sponsor is employed as indicated. I therefore refuse your application under paragraph EC-C.1.1(d) of Appendix FM ... (E-ECC.3.1).

2. In his determination promulgated on 1st September 2014 allowing both appeals Designated Judge Macdonald said at paragraph 20:

... I have from the sponsor an explanation of how he earns his money and how that money is at the necessary limit set out in the Rules. He has shown that he is paid sufficient money in terms of the Rules and explained that he has not always put that money which he has paid directly into his bank account. Against that it can clearly be seen from the bank statement referred to above that there is a direct correlation between his earnings as stated and the sums deposited in his bank.

3. The ECO appeals to the Upper Tribunal on grounds which quote that paragraph of the determination and continue thus:

5. ... the Tribunal has materially misdirected itself ... in finding that the evidence of the sponsor was sufficient under Appendix FM-SE. The sponsor states that he does not pay all of his earnings into his bank account and therefore ... the ECO can only take into account in calculating the sponsor's finances the amount that has been deposited into the bank account. While the Tribunal might accept the sponsor's explanation ... the appellant does not meet the requirements of Appendix FM-SE for the financial requirements ...

6. The Rules ... comprehensively set out ... what types of evidence are required, the periods they cover and the format that they should be in ... the Tribunal's ... findings are ... unsustainable.

4. Mrs O'Brien directed my attention to the Rules at Appendix FM-SE-family members-specified evidence. Paragraph 2 requires in respect of salaried employment in the UK various evidence all of which must be provided including (a) wage slips and:

(c) personal bank statements corresponding to the same periods as the wage slips ... 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.

Paragraph 7 requires in respect of self-employment in the UK all the various items of evidence including tax returns and:

(f) personal bank statements for the same twelve month period as the tax returns showing that the income from self-employment has been paid into an account in the name of the person or in the name of the person and their partner jointly.

5. Mrs O'Brien submitted that evidence had to be in the forms specified and could not be made good by oral or other evidence no matter how convincing. The underlying point was for the ECO to be able to find corroboration of the income. While the case might be a sympathetic one the judge had gone wrong by accepting oral explanations which were simply irrelevant.
6. Mr Hussain submitted that the appellants had shown that the sponsor's income was reflected in full by the payments into the bank statement. Although the deposits were not in the exact amount claimed, which was £756.98 per month, there were

deposits each month of more than that amount. The appellant was paid in cash and when he put the funds into the bank he rounded the amounts up. In no instance was the amount deposited less than claimed. All the other documents required by the Rules had been provided. The evidence did not have to show that payments were made by transfer from one bank account to another. The fact that the appellant had a second source of income led to the rounding up from cash in hand. Mr Hussain accepted that if the deposits had been of a lesser amount in any instance that would have been fatal to the case, but not where the amounts were rounded up.

7. I reserved my determination.
8. The scheme of Appendix FM-SE is detailed and prescriptive. I do not doubt that Tribunals must apply it according to its terms. There is no scope for judges to be satisfied by evidence not of a nature specified in the Rules. However the wording of the Rules does not insist that income must be traceable by bank-to-bank transfers of exact amounts. Any such requirement would have to be in the Rules. As I understood the submission for the ECO, it was accepted that if the appellant had taken the exact amount in cash to the bank and deposited it, that would be satisfactory.
9. The ECO's grounds of appeal are based on the conception that the sponsor "does not pay all of his earnings into his bank account". However, as portrayed in the determination at paragraph 19 in particular and in the submissions made in the First-tier Tribunal there is no evidence that the deposits in the bank account ever fell short of the income claimed – which Mr Hussain correctly accepted would be fatal. Rather, the deposits are in excess of the amount claimed, and so are consistent with all earnings being paid in. The grounds accept that the ECO could take account of those sums which were deposited.
10. The judge did not think that this was a case where the financial requirements were met by evidence other than that specified in the Rules. His view was that, properly considered, the bank statements did show the income was paid into the account. Deposits in excess, whether made separately or together with the amounts claimed, could not detract from that.
11. I do not find the grounds to disclose any error of law. The Rules required the appellant to show that salary and income were paid into the bank account. The Judge found that his evidence showed precisely that and did not find the financial requirements to be met by any evidence going outside the Rules. The determination of the First-tier Tribunal **shall stand**.



Upper Tribunal Judge Macleman
20 February 2015