



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: OA/03328/2014
OA/03330/2014

THE IMMIGRATION ACTS

Heard at Manchester
On 13th April 2015

Decision & Reasons Promulgated
On 30th April 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE LEVER

Between

MRS MEIQING WANG (FIRST APPELLANT)
MR JIAN CHEN (SECOND APPELLANT)
(ANONYMITY NOT RETAINED)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Miss Farrell
For the Respondent: Mr Harrison

DECISION AND REASONS

Introduction

1. The Appellants born on 22nd November 1972 and 30th May 1996 are both citizens of China the Second Appellant being the son of the First Appellant. The Appellants were represented by Miss Farrell and the Respondent was represented by Mr Harrison, a Presenting Officer.

Substantive Issues under Appeal

2. The Appellants had made application for settlement as a partner and child of the Sponsor under Appendix FM of the Immigration Rules. The Respondent had refused the Appellant's application on 11th February 2014. The Appellants had appealed that decision and the appeal was heard by First-tier Tribunal Judge Williams sitting at Manchester on 2nd October 2014. He had dismissed their appeals under both the Immigration Rules and on human rights grounds. Application for permission to appeal was made and was granted by First-tier Tribunal Judge Shimmin on 24th November 2014. It was said that the Grounds of Appeal that related to the judge's treatment of English language requirements and financial requirements gave rise to an arguable error of law. Directions were issued to the Upper Tribunal to firstly decide whether an error of law had been made or not. The Respondent had opposed the application by a letter dated 10th December 2014. The matter came before me in accordance with the directions.

Submissions on behalf of the Appellant

3. It was submitted that in respect of the English language requirements the application had been made on 3rd December 2013 and the decision made on 11th February 2014 that inadvertently the law used by the judge and indeed by the Appellants' representative reflected the Rules as at 1st August 2014. It was further submitted that the letter from the accountant was sufficient as being evidence from the employer.

Submissions on behalf of the Respondent

4. Mr Harrison said that the judge had dealt with language matters in the appropriate way and that the requirement of a letter from the company must come from an officer of that company and not the accountant.
5. At the conclusion I reserved my decision to consider the documents and submissions made. I now provide that decision with my reasons.

Decision and Reasons

6. Appendix O to the Immigration Rules which relates to English language requirements was inserted from 20th July 2012 by CM8423. In respect of the ISESOL relating to the spouse/partner it lists one of the following document combinations required. Appendix O firstly deals with the international speaking and listening diploma which appears to be a reference to the combined diploma and notes that for proof of that combined diploma either an international speaking and listening ISESOL diploma certificate is required or an ISESOL certificate plus an ISESOL listening certificate. That requirement would seem to flow from a situation where a candidate had had the two separate components namely speaking and listening examined and awarded together. If as the judge noted was the case before him that those two separate components had been examined separately then Appendix O

suggests three alternatives in terms of document combinations required. Whichever of the three alternatives is looked at each requires a certificate together with a notification of candidate results. That would seem to follow as a matter of common sense if exams are taken on a separate occasion. The fact the Appellant had not provided her ISESOL certificate in respect of listening suggests therefore as the judge identified at paragraphs 15 to 18 she had not complied with those strict requirements of the Rules in respect of the provision of proof in relation to the listening requirement of Appendix O.

7. In terms of the financial requirement the judge had noted that the Appellant had not provided evidence as required in Appendix FM-SE(2)(b) i.e. a letter from his employer confirming various matters. Although in this case the Appellant was essentially his own employer he had set up a limited company for whom he was employed and drew a salary and therefore fell within the requirements of Appendix FM-SE(2) requiring him in respect of that salaried employment to provide a number of documents in support of his claimed income. Appendix FM-SE(2)(b) specifically requires a letter from the employer who issued the payslips confirming those matters outlined in (i) to (iv). The requirement in the Rules appears clear and does not on the face of it allow that letter to emanate from any other source other than the employer. Accordingly a letter from an accountant for those purposes does not emanate from the employer and does not therefore fulfil the requirements of Appendix FM-SE(2)(b).
8. In summary therefore the judge did not make an error of law in refusing the Appellant's application on those two specific failings to meet the strict evidential requirements of Appendix FM-SE and Appendix O of the Immigration Rules.

Notice of Decision

I find no error of law was made by the judge in this case and uphold the decision of the First-tier Tribunal.

Anonymity not retained.

Signed

Date

Deputy Upper Tribunal Judge Lever

TO THE RESPONDENT
FEE AWARD

I have dismissed the appeal and therefore there can be no fee award.

Signed

Date

Deputy Upper Tribunal Judge Lever