



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: OA 06908 2014

THE IMMIGRATION ACTS

**Heard at Field House
On 22 April 2015**

**Decision & Reasons Promulgated
On 07 May 2015**

Before

UPPER TRIBUNAL JUDGE PERKINS

Between

ENTRY CLEARANCE OFFICER ISTANBUL

Appellant

and

**NEJLA BICER
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: Mr J Parkinson, Home Office Presenting Officer
For the Respondent: Miss N Nnamani, Counsel, instructed by Trott & Gentry
Solicitors

DECISION AND REASONS

1. I see no need for and do not make any order restricting reporting in this case.
2. This is an appeal by the Entry Clearance Officer against the decision of the First-tier Tribunal allowing the appeal of the respondent, who I identify as “the claimant”, against the decision of the Entry Clearance Officer and refusing her entry clearance to the United Kingdom to join her husband. The application was refused because she did not have enough money or rather she had not proved in the required way that she had sufficient money.

3. When the case came before the First-tier Tribunal it allowed the appeal. The Tribunal was satisfied that there was sufficient money but it misdirected itself. The misdirection is identified very clearly at paragraph 2 of the grounds which refers to paragraph 28 of the Determination. There the Tribunal found that the sponsor's income met the required income threshold of £18,600 even though the actual payment into the bank account amounted to £18,330.62. The Tribunal found that the sponsor kept some cash back and did not pay it all into his bank account.
4. The Rules contemplate people being paid in that slightly untidy way but Appendix FM-SE.A1.3(n) requires as follows:

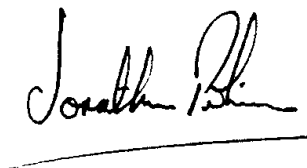
“The gross amount of any cash income may be counted where the person's specified bank statements show the net amount which relates to the gross amount on their payslips (or in the relevant specified evidence provided in addition to the specified bank statements in relation to non-employment income). Otherwise, only the net amounts shown of the specified bank statements may be counted.”
5. In other words, the Tribunal did precisely what the Rules said it should not do.
6. Ms Nnamani sought to defend the decision but there really is nothing to be said on this point except that the Tribunal was wrong. I set aside the decision of the First-tier Tribunal.
7. I must now decide how to proceed with the case.
8. Ms Nnamani argued that the claimant did in fact satisfy the requirements of the Rules and I adjourned so that she and Mr Parkinson could discuss the case to see what could be agreed. I am grateful to them for taking the sensible approach but it did not produce the results that the claimant wanted. The bank statements showed a correlation between the payslips for the period September – February which is the relevant period, save for (I think) three occasions where there was an apparent deficiency that was explained by reference to payment by cheque rather than cash.
9. The difficulty lies not in the method of payment but in the money paid that way not being sufficient. The appellant relied on a six month period so needed to show payment in excess of £9,000 to reach the £18,600 threshold. In fact the sums identified in this way came to only £8,264 and perhaps some pence. This is just not enough money. It is right that there was before the First-tier Tribunal a P60 which assisted the claimant but this on its own is not sufficient evidence. Reference has to be made to the bank accounts and that line of evidence just does not work.
10. I have sat back and reflected a little on this case because it is a matter of concern that the Entry Clearance Officer's figures cannot be traced in the sense that neither Mr Parkinson nor Ms Nnamani could work out how the Entry Clearance Officer got the figures that he did. It might be something Entry Clearance Officers will want to think about because it is frustrating in the extreme that time is taken up trying to follow these things through. Although there are many exceptions, lawyers, in my experience, are frequently not good accountants and need all the help they can get.

11. I have to say that on a proper analysis of the evidence the applicant has failed to show that her husband earned sufficient money to meet the requirements of the Rules and the appeal must be dismissed under the Rules. I have reminded myself that the standard of proof that the appellant must achieve is the balance of probabilities but this is not really a “standard of proof case”. The evidence, literally, does not add up.
12. Miss Nnamani properly reminds me that Article 8 of the European Convention on Human Rights has been raised and I agree that a decision that prevents a wife joining her husband is an interference with the private and family lives of those concerned. However a decision that is in accordance with the Rules is almost always going to be a proportionate decision. The Rules are part of a scheme that enables immigration control to be predictable and regulated and this appellant does not satisfy them.
13. If I were to allow the appeal on human rights grounds then I would allow the appeal because the sums were close to the required amount. Put that way it is obviously the wrong thing to do. I cannot see any way in which the appeal could be allowed responsibly on Article 8 grounds and so I set aside the decision of the First-tier Tribunal and I substitute a decision dismissing the claimant’s appeal against the Entry Clearance Officer’s decision for the reasons I have given above.
14. I appreciate this is going to be disappointing for the people concerned but the Rules are there and it is for applicants to satisfy their requirements.

Notice of Decision

The Entry Clearance Officer’s appeal is allowed. I set aside the decision of the First-tier Tribunal and substitute a decision dismissing the claimant’s appeal.

Signed
Jonathan Perkins
Judge of the Upper Tribunal

A handwritten signature in black ink, appearing to read 'Jonathan Perkins', written over a horizontal line.

Dated 1 May 2015