



IAC-FH-NL-V1

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

Appeal Number: OA/12841/2014

THE IMMIGRATION ACTS

**Heard at Bradford
On 30th June 2015**

**Decision & Reasons Promulgated
On 8th July 2015**

Before

UPPER TRIBUNAL JUDGE D E TAYLOR

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**MUHAMMAD SAAD MASUD
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: Mr M Diwnycz, Home Office Presenting Officer

For the Respondent: In person

DECISION AND REASONS

1. This is the Secretary of State's appeal against the decision of Judge Doyle made following a hearing at Bradford on 16th February 2015.

Background

2. The claimant is a citizen of Pakistan born on 21st August 1987. He applied to come to the UK as a spouse but was refused on 18th September 2014 on the grounds that he could not meet the maintenance requirements of the Rules.

3. The sponsor was employed from 1st July 2013 and left on 14th March 2014, with a gross salary of £14,040. She earned £270 per week gross and £237 net and put £200 into her bank account. On 17th March 2014 she took up fresh employment, where she remains, and earns a gross salary of £16,980. In addition she receives £5,400 per annum rental income, all of which goes into her bank account.
4. The judge was satisfied that the sponsor had an income of more than £18,600 per annum and allowed the appeal.
5. The Secretary of State now challenges that decision on the grounds that the judge failed to realise that the claimant could only rely on the sponsor's income as demonstrated by specified evidence set out in Appendix FM/SE. Only wages paid into a bank account and appearing on the bank statements may be counted towards the sponsor's gross income in accordance with the evidence of financial requirements 1(n) of Appendix FM/SE. On that basis, the sponsor had, at the date of decision, only an annual income of £10,400 from her salary which together with the rental income was below the required threshold.
6. Under FM/SE(1)(n) 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 shown 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 income shown on the specified bank statements may be counted.
7. The sponsor actually changed employment on 17th March 2014 i.e. just over six months before the date of decision and her full wages from that time went straight into the account. However under Section 2(a) of Appendix FM/SE payslips must cover a period of six months prior to the date of application if the person has been employed by the current employer for at least six months.
8. The application was made in January 2014 and therefore the relevant payslips were the former wages, only £200 per week which were put into the bank account.
9. The judge therefore erred in law in failing to take into account the provisions of Appendix FM/SE.
10. It appears that the sponsor does earn a sufficient income to meet the requirements of the Immigration Rules and, providing that it is properly evidenced, there is no reason why a second application should not be successful.

Notice of Decision

11. The original judge erred in law. His decision is set aside. The claimant's appeal is dismissed.
12. No anonymity direction is made.

Signed

Date

Upper Tribunal Judge Taylor