



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: OA/16280/2013

THE IMMIGRATION ACTS

Heard at: Manchester
On: 3rd November 2014

Determination Promulgated
On: 6th February 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE BRUCE

Between

Entry Clearance Officer, Islamabad

Appellant

and

Huma Sami Ullah
(no anonymity direction made)

Respondent

Representation:

For the Appellant:

Ms Johnstone, Senior Home Office Presenting Officer

For the Respondent:

Mr Kamran, Pride Solicitors

DETERMINATION AND REASONS

1. The Respondent is a national of Pakistan date of birth 18th August 1985. On the 6th June 2014 the First-tier Tribunal (Judge Crawford) allowed her appeal against a refusal to issue her with entry clearance as the spouse of a person

present and settled in the UK. The Entry Clearance Officer (ECO) now has permission to appeal against that decision¹.

2. In the notice of refusal dated 25th July 2013 the ECO makes three points.
3. The first there was some ambiguity in the evidence about whether the Sponsor was free to marry the Respondent; this was resolved in the Respondent's favour by the First-tier Tribunal and the present appeal makes no challenge to that finding.
4. Secondly the ECO was not satisfied that this is a genuine and subsisting marriage. Judge Crawford heard oral evidence from the sponsor and took into account money transfer receipts and telephone bills showing contact between the pair. In respect of the latter some of these post-dated the decision; the Tribunal noted that they were therefore of limited evidential value, only going to show that the previous contact is ongoing. He was satisfied that there is a genuine relationship. The ECO's Grounds of Appeal to this Tribunal challenge that finding on the grounds that the post-decision evidence should have been entirely excluded from Judge Crawford's reasoning. Permission has been expressly refused on that point, Judge Grant-Hutchinson finding "there is no error of law for the Judge to have relied on post-decision evidence of contact between the parties to show that they have a genuine and subsisting marriage and intend to live together permanently. The Judge accepted there was pre-decision evidence and the post-decision evidence strengthens his views that their relationship has remained the same". I would respectfully agree and find there to be no error in the approach taken to the telephone bills.
5. That leaves in issue the final matter: maintenance. The refusal notice simply states that no decision had been made in respect of whether the application met the requirements of Appendices FM and FM-SE; because the ECO found the application to fall at the first hurdle no consideration had been given to this matter. Having resolved all other matters in Ms Ullah's favour, Judge Crawford proceeded to deal with this issue on appeal. He noted that the burden lay on the applicant to show that her Sponsor was earning over the required £18,600 per annum. Judge Crawford made findings of fact that he was actually earning £19,500, and allowed the appeal. The ECO takes two issues with that. First it is said that Judge Crawford failed to have regard to the specified evidence requirements of Appendix FM-SE, which the Sponsor had not met; secondly it is said that he erred in failing to assess the Sponsor's income at the date of decision (as opposed to the date of hearing).

Error of Law

6. At the hearing on the 3rd November 2014 I heard submissions from both parties and having done so I indicated that the ECO had shown the determination to contain an error of law. In order for the appeal to be allowed under the Immigration Rules, Ms Ullah had to show that her

¹ Permission granted by First-tier Tribunal Judge Grant-Hutchinson on the 29th July 2014

sponsor not only earned the requisite amount of money at the relevant date, but she had to demonstrate that with reference to particular pieces of evidence as stipulated in paragraph 2 of Appendix FM-SE. This determination does not refer to Appendix FM-SE but appears to accept that the requirements of paragraph E-ECP.3.1 of Appendix FM are met simply by reference to the Sponsor's tax documents and payslips. One might think that the fact that he has paid HMRC tax on an income of £19,500 might be enough to satisfy the ECO that he does earn that amount, but there we are. The rules are the rules, and this determination fails to make clear findings as to whether they were met.

The Re-Making

7. Following my indication that I had found an error of law the parties acknowledged that they were in difficulties dealing with the remaining live issue. Because the ECO had not addressed maintenance in his decision, the documentary evidence that had been submitted with the application had not been reproduced in the ECO's bundle. Ms Ullah's solicitors did not appear to have a full record of what had been submitted and when. I therefore agreed to delay the re-making until all of the evidence was before me and the parties had each had an opportunity to make any written submissions on it that they wishes.
8. That apparently simple course of action proved rather more complicated than it initially seemed; the Respondent changed representatives part way through proceedings and her current representatives wrote at least twice to the Tribunal requesting a full copy of Judge Crawford's decision, necessitating further directions to be sent on the 26th November 2014 in which I pointed out that they had been provided with a full copy at the hearing on the 3rd November 2014 and that in any event it was now immaterial since that decision had been set aside. They nevertheless persisted in making lengthy written submissions as to why the decision of Judge Crawford did not contain a material error of law, and entirely failing to provide the evidence that was the object of the lengthy adjournment. Both parties have now had plenty of opportunity to comply with my directions.
9. The only issue is whether Ms Ullah and her sponsor can show that at the date of decision on the 25th July 2013 she met the requirements of paragraph E-ECP.3.1. To do that she must show that their household had an income of at least £18,600 at that date and demonstrate this with reference to ALL of the documents mentioned in paragraph 2 of FM-SE:

2. In respect of salaried employment in the UK (except where paragraph 9 applies), all of the following evidence must be provided:

(a) Payslips covering:

- (i) a period of 6 months prior to the date of application if the person has been employed by their current employer for at least 6 months

(and where paragraph 13(b) of this Appendix does not apply); *or*

(ii) any period of salaried employment in the period of 12 months prior to the date of application if the person has been employed by their current employer for less than 6 months (or at least 6 months but the person does not rely on paragraph 13(a) of this Appendix), or in the financial year(s) relied upon by a self-employed person.

(b) A letter from the employer(s) who issued the payslips at paragraph 2(a) confirming:

- (i) the person's employment and gross annual salary;
- (ii) the length of their employment;
- (iii) the period over which they have been or were paid the level of salary relied upon in the application; and
- (iv) the type of employment (permanent, fixed-term contract or agency).

(c) Personal bank statements corresponding to the same period(s) as the payslips at paragraph 2(a), 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.

(d) Where the person is a director of a limited company based in the UK, evidence that the company is not of a type specified in paragraph 9(a). This can include the latest Annual Return filed at Companies House.

10. The Sponsor is Mr Sami Ullah. He is the manager of a family business, established in 1971. It is a mini-supermarket. He receives his income in cash and payslips are generated by the accountant. With reference to paragraph 2 of FM-SE I have the following evidence before me:

- a) Payslips issued by Burnage Food Store between the 5th October 2012 and 18th May 2013, showing gross income of £375 per week. There are actually more payslips than this but I mention these because these cover the 6 month period immediately prior to, and including, the date of application. The salary shown equates to £19,500 per annum. I am satisfied that this requirement of FM-SE is met.
- b) There is no letter from the employer in the material before me.
- c) The bundles do contain some bank statements from the Halifax and these do show some deposits. They do not however correspond to the same six month period as the payslips and it is not clear that the Sponsor's wage was paid in each week.
- d) This is not applicable to the Sponsor's salaried employment.

11. The material before me fails to demonstrate that all of the evidential requirements were met. Like Judge Crawford I have no doubt that Mr Ullah

does earn £19,500 per annum but he has failed to prove this with reference to the right bits of paper.

12. I heard no submissions on Article 8 but insofar as this decision might be said to show a lack of respect for the parties' right to family life with each other, I note that there is nothing to prevent Ms Ullah from making a fresh application, which supported by the correct documentation – I have set it out above – will now succeed since the Tribunal's findings as to the *bona fides* of this marriage are upheld.

Decisions

13. The determination of the First-tier Tribunal contains errors of law and it is set aside.
14. The decision in the appeal is remade as follows:
“the appeal is dismissed on all grounds”.
15. I make no direction for anonymity.

Deputy Upper Tribunal Judge Bruce
27th January 2015