



**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: OA/21773/2013**

THE IMMIGRATION ACTS

**Heard at Field House
On 19 February 2015**

**Determination
Promulgated
On 25 February 2015**

Before

Deputy Upper Tribunal Judge MANUELL

Between

**Mr ASGHAR ALI
(NO ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr N Ahmed, Counsel (instructed by DV Solicitors)

For the Respondent: Mr S Whitwell, Home Office Presenting Officer

DETERMINATION AND REASONS

Introduction

1. The Appellant appealed with permission granted by First-tier Tribunal Judge De Haney on 9 January 2015 against the determination of First-tier Tribunal Judge Stott who had dismissed the Appellant's appeal in a decision and reasons promulgated on 22 October 2014.

2. The Appellant is a national of Pakistan, born on 14 November 1979, who had applied for leave to enter the United Kingdom as the spouse of a British Citizen under Appendix FM of the Immigration Rules, which was refused by the Entry Clearance Officer on 19 November 2013. The judge found that the Appellant had not produced a document specified under Appendix FM-SE, namely official documentation from the Department of Work and Pensions ("DWP") confirming the sponsor's entitlement to Severe Disablement Allowance ("SDA"). The credits in the sponsor's bank account showing such receipts were only one element of the requirement. The letter on which the Appellant relied was from Jobcentre Plus, and there the SDA was described as "income you told us about": see [15] and [16] of the decision. The judge held that the Immigration Rules were not satisfied and that there was no breach of the *status quo* so that Article 8 ECHR was not engaged.
3. Permission to appeal to the Upper Tribunal was granted by First-tier Tribunal De Haney because he considered that it was arguable that the judge had (a) been wrong as to his understanding of the specified evidence, in that the letter from Jobcentre Plus was from the DWP and (b) failed to carry out a proper Article 8 ECHR assessment.
4. The Respondent indicated by a rule 24 notice that the onwards appeal was opposed. Standard directions were made.

Submissions – error of law

5. Mr Ahmed for the Appellant relied on the grounds of onwards appeal on which permission to appeal had been granted, and his skeleton argument. The Appellant had shown that the income requirement was met. The judge had found as fact that it was. It was a question of whether the correct evidence of such income had been produced. Jobcentre Plus was operated by the DWP and thus part of the DWP. The judge should have accepted the Jobcentre Plus letter as adequate, especially as there were corresponding bank statements proving income from the DWP.
6. Even if the judge had been right on the documentation issue, which was not accepted, the judge had acted unfairly by not requiring the Entry Clearance Officer to seek clarification. Discretion should have been exercised by the Entry Clearance Officer. The Article 8 ECHR claim was not adequately considered and the discretion outside the Immigration Rules was ignored.
7. Mr Whitwell for the Respondent submitted that there was no perversity and that the submissions on behalf of the Appellant simply amounted to disagreement with the judge's decision. Appendix FM-SE to which the judge had referred set out two mandatory evidential requirements: see 12(a), evidence from the payer and 12(b), proof of

receipt from the same source. The fact that Jobcentre Plus was part of the DWP was beside the point. The letter, as the judge had indicated, was not a primary source of information about the Severe Disablement Allowance but simply a recitation of what the sponsor had said. The judge was right to find that Appendix FM-SE had not been met. The fact that the bank statements produced showed receipt of SDA was immaterial and the judge was entitled to reach the conclusion he had.

8. In reply, Mr Ahmed submitted that it was not in dispute that Jobcentre Plus was part of the DWP. The judge had found that the sponsor was entitled to the SDA. The judge's conclusion should not be sustained.

No material error of law finding

9. The tribunal reserved its determination which now follows.
10. The judge had not misunderstood the facts. He was plainly aware of the link between Jobcentre Plus and the DWP. But as the judge found, the Jobcentre Plus letter recited information supplied by the Appellant's sponsor. Rule 12 of Appendix FM-SE has two separate mandatory requirements, as Mr Whitwell submitted, requiring direct evidence of the source and direct evidence of the receipt from such source. The judge was correct to find that only a letter from the DWP itself, stating the sponsor's current benefits entitlement was capable of satisfying the rule. The fact that there was separate evidence of receipt of funds from the DWP was insufficient, because that met only one part of the requirement.
11. Given that the judge found that the Appellant had not satisfied the Immigration Rules, but would be able to do so, by implication, readily, it was obvious that proportionality under Article 8 ECHR would require a fresh and compliant application by the Appellant. There was no requirement for any discretion to be exercised by the Entry Clearance Officer in such circumstances. Nor was there any requirement for the Entry Clearance Officer to seek clarification from the Appellant. The judge correctly found that the refusal decision did not interfere with the Appellant's existing level of family life with his sponsor.
12. Thus the tribunal finds that there was no material error of law in the decision and reasons and there is no basis for interfering with the judge's decision.

DECISION

The making of the previous decision did not involve the making of an error on a point of law and stands unchanged

Signed

Dated 19 February 2015

Deputy Upper Tribunal Judge Manuell

TO THE RESPONDENT
FEE AWARD

The appeal was dismissed so there can be no fee award

Signed

Dated 19 February 2015

Deputy Upper Tribunal Judge Manuell