



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: OA/06039/2014

THE IMMIGRATION ACTS

Heard at Birmingham
On 11 January 2016

Decision & Reasons Promulgated
On 14 January 2016

Before

DEPUTY UPPER TRIBUNAL JUDGE SAFFER

Between

ENTRY CLEARANCE OFFICER - ISLAMABAD

Appellant

and

SHAKILA IFTIKHAR
(NO ANONYMITY ORDER MADE)

Respondent

Representation:

For the Appellant: Mr Mills a Home Office Presenting Officer

For the Respondent: Mr Hussain a Solicitor

DECISION AND REASONS

Background

1. For ease of reference and continuity with the First-tier Tribunal, I shall refer to the Entry Clearance Officer as the Respondent and Mrs Iftikhar as the Appellant.

2. The Respondent refused the Appellant's application for leave to enter as a spouse on 30 October 2014. Her appeal against that decision was allowed by First-tier Tribunal Judge Pacey ("the Judge") following a hearing on 2 January 2015.

The grant of permission

3. First-tier Tribunal Judge Ford granted permission to appeal (17 February 2015) on the ground that;

"It is arguable that Judge Pacey did not have evidence before her on which to be satisfied that the Appellant was earning the required level of income during the relevant period as evidenced by the specified evidence."

4. I point out here that there was a clear typographical error in the grant as the obligation is for the Appellant to show that her Sponsor is earning the required level of income and not the Appellant herself.

Submissions

5. The Appellant did not file a rule 24 reply. Mr Hussain argued that the Judge took the view that the later evidence could be considered even if it was not with the application. The additional evidence was submitted prior to the Respondent's decision.

6. Mr Mills submitted that Appendix FM-SE 2 (a) of the Statement of Changes in Immigration Rules HC395 ("the rules") are clear in that (my underlining):

"In respect of salaried employment in the UK ... 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 ..."

The Judge's findings

7. The Judge found as follows;

"[8] In his statement dated 12th November 2013 the Sponsor refers to a gross salary from Amazon of £15,704. Matters have, however moved on since then as the Sponsor said that he had a promotion at Amazon. He initially worked through an agency for Amazon but in due course was taken on full-time and, again in due course, had a promotion. That explains why the P60 for the financial year ending April 2014 only shows pay of £8,337.64. There is, however, an annual tax summary. This appears at page 141 of the bundle provided by on behalf of the Appellant. The tax summary is an official document and has clear probative value. It is not challenged for reliability on behalf of the Respondent and nothing on the face of it gives reasonable grounds for doubting its reliability. This document shows that the Revenue recorded the taxable income of the Sponsor,

for the financial year ending April 2014, as £18,706.26. That document reflects the evidence of the Sponsor, to the effect that his wages at Amazon increased, when he was taken on full-time and when he was given a promotion. The figure recorded in the HMRC document which I have referred is in excess of the £18,600 threshold. Quite apart from the HMRC letter the oral evidence of the Sponsor, at the hearing, is supported by the Amazon payslips included in his bundle.

[9] The Notice of Appeal included in the Respondent's bundle indicates that the appeal is in respect of the original decision. At the time of both decisions, however, it appears to me on the totality of the documentary evidence before me that the Sponsor met the relevant criteria of Appendix FM in that his income was in excess of the threshold provided. That income is from Amazon. For the reasons set out above I have disregarded any income from A1 Cars. The Respondent does not contend that the evidential requirements in relation to the Amazon income have not been met ..."

Discussion

8. It is not challenged that the finding made by the Judge that the A1 Cars income could not be taken into account, as the cash income was not reflected in the bank statements produced.
9. At the date of the application, the Sponsor worked for Amazon through an agency called Industrious Ltd. The payslip for 27 October 2013 (that being the latest payslip prior to the application) identified to then a gross annual income of £9,196.68. That was almost 7 months into the financial year. Even doubling it would not reach the required £18,600 threshold. He did not have sufficient savings to "top up" the shortfall as his savings did not exceed £16,000 as evidenced by his bank statements as the latest one identified a balance on 20 September 2013 as £17.65.
10. The rules are explicit in that the evidence to support the meeting of the income threshold had to have been submitted with application. In this case that did not happen as evidence of the Amazon income fell below the threshold. The Judge materially erred in not applying the rule correctly.
11. I am therefore satisfied that the Judge made a material error of law. I set the decision aside.

Rehearing

12. Both representatives asked me to remake the decision rather than remitting it. I agreed that this was the most appropriate course of action.
13. The evidence submitted with the application identified an income through agency work of less than the required threshold of £18,600 (see [9] above). The rules are explicit in that the evidence to support the meeting of the income threshold had to have been submitted with application. In this case that did not happen as evidence of the Sponsors income fell below the threshold.

14. I therefore dismiss the appeal under the Immigration Rules.
15. I can only consider Article 8 outside the rules if there are arguably good grounds for granting leave to enter outside the rules, or compelling circumstances not sufficiently recognised under them. If there are, I can only allow an Article 8 appeal if the 5 Razgar questions are answered in the affirmative.
16. In considering human rights there is only a small gap where an appeal can be allowed outside the rules where they do not provide a complete code. I must consider human rights as at today's date through the prism of the rules which are the starting point for my consideration of them. Even where the rules do not provide a "complete code" they help illuminate the regulatory and policy context which I need to take into account.
17. In my judgement these rules do provide a complete code as I have been able to spell them out above with clarity. I do not therefore see any "gap" to consider human rights.
18. Even if I am wrong in that, I would have dismissed the appeal for all the following reasons.
19. The decision to refuse entry clearance does not interfere with the couple's right to respect for their family and private life. It maintains the status quo they decided was most appropriate of getting married before the Appellant received entry clearance.
20. It has not been established that the decision can cause consequences of gravity even given the low threshold involved as all they need to do is reapply in the usual way and produce the specified evidence to the Respondent who will assess it in the usual way. It is lawful given the failure to meet the rules and for the legitimate aim of ensuring that the economic well being of the country is shown to be maintained.
21. Given how the couple, in the application, failed by the production of specified evidence under the rules to establish that at the date of the decision they met the relevant financial threshold, and the ease with which that can be addressed, namely the Appellant submitting the specified evidence, it is in my judgement a proportionate response to the need to maintain the economic well being of the country to require them to prove that they now meet the relevant maintenance thresholds and reapply when they can establish to the Respondent that they do so. The speed they are able to do so is in their hands.

Decision:

The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.

I set aside the decision.

I dismiss the appeal.

Signed:
Deputy Upper Tribunal Judge Saffer
12 January 2016