



IAC-AH-SAR-V1

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

Appeal Number: OA/08369/2014

THE IMMIGRATION ACTS

**Heard at Centre City Tower, Birmingham
On 3rd February 2016**

**Decision & Reasons Promulgated
On 24th February 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE M A HALL

Between

**UZMA HASSAN
(ANONYMITY ORDER NOT MADE)**

Appellant

and

ENTRY CLEARANCE OFFICER - ISLAMABAD

Respondent

Representation:

For the Appellant: Miss E Rutherford of Counsel instructed by Khan & Co Solicitors

For the Respondent: Mrs R Petersen, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction and Background

1. The Appellant appeals against the decision of Judge Shergil of the First-tier Tribunal (the FtT) promulgated on 19th May 2015.
2. The Appellant is a female citizen of Pakistan born 1st January 1989 who applied for entry clearance to the United Kingdom, so that she could settle with her spouse Hasan Saleem (the Sponsor) who is a British citizen.

3. The application was refused on 18th June 2014. The Respondent contended that the Appellant had made false representations with regards to the Sponsor's income and therefore the refusal was based upon S-EC.2.2(a) which is set out below;

'... false information, representations or documents have been submitted in relation to the application (including false information submitted to any person to obtain a document used in support of the application);'

The Respondent contended that the amounts deposited into the Sponsor's bank account did not match the figures shown on his pay slips, despite the payment method being listed as BACS. In addition to the amounts being different, the salary deposits shown in the bank statements were not made via BACS.

4. In addition the Respondent refused the application with reference to E-ECP.3.1 because the evidence did not prove that the Sponsor's gross income from his employment was at least £18,600 per year.
5. The Appellant appealed and appeared before the FtT, without legal representation, on 5th May 2015. After hearing evidence the FtT found that the Sponsor was not a witness of truth, and dismissed the appeal under the Immigration Rules and on human rights grounds.
6. The Appellant thereafter obtained legal representation, and applied for permission to appeal to the Upper Tribunal.
7. In summary it was contended that the FtT had acted unfairly because the Respondent had provided a bundle of documents, which was incomplete. The Respondent had failed to provide to the Tribunal full copies of the bank statements supplied with the Appellant's application. The FtT had noticed this, but had made no attempt to obtain the full statements. Had the FtT had the complete statements, it would have had a clearer picture as to the Sponsor's finances, and the Sponsor could have been asked more specific questions, rather than him being questioned about documents that were not fully before the Tribunal.
8. Had the complete documents been available, it was submitted that the FtT may have reached a different conclusion as to the Sponsor's credibility, as he would have been able to refer to the bank statements, which may have assisted him in answering questions about deposits into his account.
9. It was also contended that the FtT had made findings without giving adequate reasons. In particular, an accountant's letter had been rejected, as had the Sponsor's evidence regarding the method of payment of his salary, and evidence from HMRC had also been rejected without adequate reasons being given.
10. Permission to appeal was refused by Judge Holmes of the FtT, which caused the Appellant to make a renewed application to the Upper Tribunal, and permission to appeal was granted by Upper Tribunal Judge Taylor in the following terms;

"Many of the points made in the grounds amount to a re-argument of the Appellant's case. However, I am concerned about the procedural fairness issue. The Appellant was not legally represented and the judge was aware that the ECO had provided incomplete evidence. That may or may not turn out to be material.

All grounds may be argued”.

11. Following the grant of permission the Respondent lodged a response pursuant to rule 24 of The Tribunal Procedure (Upper Tribunal) Rules 2008 contending, in summary, that the FtT had directed itself appropriately. It was not the function of the ECO to make out the Appellant’s case, and the burden fell on the Appellant to demonstrate that she met the requirements of the Immigration Rules. There appeared to be no indication as to how any missing evidence would have made a material difference to the appeal.
12. The Tribunal issued directions making provision for there to be a hearing before the Upper Tribunal to decide whether the FtT decision should be set aside.

The Appellant’s Submissions

13. At the hearing before me Miss Rutherford relied and expanded upon the grounds contained within the application for permission to appeal.
14. I was asked to note that the Sponsor had appeared without legal representation, and that the bank statements were incomplete. The Sponsor had been cross-examined as to deposits made into his bank account, and this was unfair, because the bank statements were incomplete. Therefore the Sponsor was disadvantaged, and there was procedural unfairness.
15. I was asked to note that HMRC documentation had been submitted, together with P60 forms, and Miss Rutherford submitted that the FtT should have considered the evidence in the round rather than rejecting the Sponsor’s evidence, and then going on to reject the HMRC evidence.

The Respondent’s Submissions

16. Mrs Petersen confirmed that she was in possession of the Respondent’s bundle that was before the FtT and the bank statements covered a period between 1st June 2013 and 19th December 2013 although there appeared to be some pages missing. These documents had been supplied to the Respondent by the Sponsor. It was not the case that the Respondent had not submitted all of the documents provided by the Sponsor. The bank statements that were before the FtT were therefore those supplied by the Sponsor.
17. I was asked to find that the absence of some pages made no material difference to the decision made by the FtT. The FtT had analysed the evidence in its entirety and was entitled to conclude that the Sponsor’s evidence could not be relied upon. The issues in the appeal had been made clear by the Respondent’s reasons for refusal, and it was apparent from the Sponsor’s witness statement dated 27th April 2015 that he was aware of those issues.

The Appellant’s Response

18. Miss Rutherford reiterated that because incomplete bank statements had been submitted, the Sponsor was disadvantaged, and this affected his ability to answer questions.

19. At the conclusion of oral submissions I reserved my decision.

My Conclusions and Reasons

20. I do not find that the FtT acted unfairly and I find no error of law disclosed by this ground of appeal for the following reasons.
21. It is not the case that the Respondent was responsible for failing to provide full copies of the Sponsor's bank statements to the FtT. I accept that the Respondent's bundle contained all of the bank statements that were submitted by the Sponsor to the Respondent.
22. In my view, when one party to the appeal does not have legal representation, the FtT should be extremely careful to ensure that there is a fair hearing, and that the unrepresented party is not disadvantaged. Having considered the FtT decision in this case, I am satisfied that the Appellant was not disadvantaged. It is the responsibility of the Appellant, to provide evidence to discharge the burden of proof, and prove that the appeal should be allowed. I am satisfied that the issues in this appeal were made clear by the Respondent's reasons for refusal, and the Sponsor's witness statement indicates that he was aware of the issues in the appeal.
23. The FtT studied the Sponsor's bank statements and realised (see paragraph 16) some pages were missing. The FtT specifically considered this point, and concluded that there was sufficient information from the bank statements to enable the FtT to undertake "a fair and accurate analysis of the relevant information". Although there were some missing pages, each bank statement showed the start balance, money in, money out, and the end balance.
24. It was not the fact that there were some pages of the bank statements missing that caused the FtT to make adverse credibility findings. The FtT noted the Sponsor could not explain why he was depositing more money than his pay slips displayed. The FtT observed a discrepancy in the Sponsor's evidence (page 20 of the decision) as to how he was paid his salary. The Sponsor had stated in his witness statement that he was paid cash by both employers, and repeated this in cross-examination. However when questioned by the FtT, he contradicted this evidence, stating that he was paid in cash by one employer, and by cheque from another.
25. At paragraph 22 the FtT records a further discrepancy as to the hours that he worked, and noted that he was unable to state how much he was paid per hour.
26. The FtT considered the Sponsor's oral evidence together with the documentary evidence, and was entitled to conclude that he was not a witness of truth.
27. The FtT considered documentation supplied by HMRC, and in my view considered that evidence in the round, together with the other evidence submitted on behalf of the Appellant, and was entitled to conclude that the amount disclosed to HMRC was not actually what the Sponsor was paid.
28. I therefore do not find that the FtT hearing was conducted unfairly. The remaining grounds of appeal display a strong disagreement with the conclusions reached by the FtT but do not disclose any material error of law. The FtT has considered all the

evidence supplied on behalf of the Appellant, and made findings on that evidence, and those findings are supported by adequate reasons. Paragraph 25 of the FtT decision summarises the reasons given by the FtT. This is not an appeal where the reasoning is so inadequate that the losing party, looking at the decision, would not understand why they have lost.

29. In my view, the FtT did not neglect to consider any material evidence, and did not place weight upon any immaterial evidence. The weight to be attached to evidence is for the judge hearing the appeal to decide, and those findings should not be set aside, unless there is a material error of law, and in this appeal, whilst there is disagreement with the FtT findings, there is no error of law and therefore the decision stands.

Notice of Decision

The making of the decision of the FtT did not involve the making of an error on a point of law such that the decision must be set aside. The appeal is dismissed.

Anonymity

No anonymity direction was made by the FtT. There has been no request for anonymity made to the Upper Tribunal and no anonymity order is made.

Signed

Date 8th February 2016

Deputy Upper Tribunal Judge M A Hall

TO THE RESPONDENT FEE AWARD

The appeal is dismissed. There is no fee award.

Signed

Date 8th February 2016

Deputy Upper Tribunal Judge M A Hall