



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/05968/2015

THE IMMIGRATION ACTS

Heard at Field House
On 16 June 2017

Decision & Reasons Promulgated
On 20 June 2017

Before

UPPER TRIBUNAL JUDGE GILL

Between

SAAD JAVED MALIK
(ANONYMITY ORDER NOT MADE)

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation

For the Appellant: Mr A Chohan, of Counsel, instructed by AWS Solicitors Ltd.
For the Respondent: Mr. P. Duffy, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a national of Pakistan, born on 7 September 1987. He has been granted permission to appeal against a decision of Judge of the First-tier Tribunal Turnock who, following a hearing on 14 March 2016, dismissed his appeal against a decision of the respondent of 7 September 2015 refusing his application of 7 July 2015 for further leave to remain as the spouse of Aishe Sehr Saad Malik (the “sponsor”), a British citizen.
2. The judge dismissed the appellant's appeal under the Immigration Rules and on human rights. In relation to his decision under the Rules, it is clear that he only took into account the sponsor's earnings. It is also clear that he considered that, in relation to the sponsor's earnings, the appellant had submitted only 25 payslips (as opposed to 26 payslips, as had been contended). He therefore found that the appellant had not submitted the sponsor's payslips for the period of six months ending on the date of the application.
3. The evidence before the judge was that the respondent accepted that the appellant's earnings gross annual earnings were £8,444.80 and the sponsor's gross annual earnings were £12,478.96.

4. At the hearing before me, Mr Duffy accepted that, as the appellant had applied for leave to remain in-country, his gross annual earnings should have been into account as well as the sponsor's gross annual earnings. Mr Duffy accepted that the appellant satisfied the applicable minimum income requirement ("MIR") of £18,600 because he had submitted evidence with his application that showed that he had gross annual earnings of £8,444.80 and that the sponsor had gross annual earnings of £12,478.96. He accepted that the judge therefore materially erred in law in finding that the appellant did not satisfy the MIR.
5. In addition, in relation to Appendix FM-SE, Mr Duffy accepted that, if it had been the case that the appellant had only submitted 25 payslips with his application, the circumstances falls within the respondent's Evidential Flexibility Policy and therefore that the respondent should have requested the missing payslip.
6. Accordingly, Mr Duffy accepted that the judge should have allowed the appeal under the Rules.
7. In relation to the judge's decision on Article 8, Mr Duffy accepted that the judge's material error in relation to the MIR also materially affected his decision in relation to Article 8.
8. For the reasons given by Mr Duffy, I am satisfied that the judge materially erred in law in reaching his decision to dismiss the appeal under the Rules and on human rights. I therefore set aside his decision in its entirety.
9. For the reasons given at para 3-5 above and as Mr Duffy agreed, I allow the appellant's appeal under the Rules. There is therefore no need to consider the Article 8 claim outside the Rules.

Decision

The making of the decision of the First-tier Tribunal involved the making of an error on a point of law such that it fell to be set aside. I set aside the decision. I re-make the decision by allowing the appellant's appeal against the respondent's decision under the Immigration Rules.



Signed
Upper Tribunal Judge Gill

Date: 20 June 2017