



Upper Tribunal

(Immigration and Asylum Chamber)

Appeal Number: HU/09441/2015

THE IMMIGRATION ACTS

Heard at Manchester Piccadilly

On the 14th February 2018

Decision & Reasons Promulgated

On the 26th February 2018

Before:

UPPER TRIBUNAL JUDGE MCGINTY

Between:

MR M. A.

(Anonymity Direction made)

Claimant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant in the Upper Tribunal

Representation:

For the Claimant: Miss G. Patel (Counsel)

For the Secretary of State: Mr McVeety (Senior Home Office Presenting Officer)

DECISION AND REASONS

1. This is the Secretary of State's appeal against the decision of First-tier Tribunal Judge Lloyd promulgated on the 16th May 2017 in which she allowed the Claimant's appeal against the Secretary of State's decision to refuse him Entry Clearance as a spouse , in

order to join his Sponsor and wife [PB], on Human Rights grounds under Article 8. For the purposes of clarity, given that this is the Secretary of State's appeal, I will refer to the Secretary of State as being the Secretary of State and to Mr M. A. as being the Claimant.

2. Within the Grounds of Appeal it is argued firstly, that the Judge materially erred in law in finding that a discrepancy in the wage slips of 86 pence was so small that she considered it to be *de minimis*. It is argued that following the Upper Tribunal case of Chau Le (Immigration Rules – de minimis principle) [2016] UKUT 186, that the principle has no application in the construction of the Immigration Rules and that the Judge erred in finding that the provisions of Appendix FM-SE were satisfied, as the wage slips did not correspond to the entries in the bank statements and that the explanation for which is immaterial.
3. It is argued in the second ground that the Judge erred in accepting the so-called explanations for the fact that the wage slips and bank statements did not correspond and that the Judge has speculated in making such a finding unsupported by evidence and that it was not open to the Judge to second-guess the reason for the discrepancy.
4. Permission to appeal has been granted by First-tier Tribunal Judge Grimmett on the 29th November 2017 who found that it was arguable that the Judge made an error when concluding that the financial requirements were met when there were discrepancies between the Sponsor's wage slips and the actual receipts shown in the bank statements and where there had been no explanation provided by the employer and that it was also arguable that the *de minimis* principle did not apply to such an appeal.
5. In his submissions to the Upper Tribunal, Mr McVeety, in complying with his duty to the court, argued that the First-tier Tribunal Judge had erred in finding that the provisions of the Immigration Rules were met in circumstances where the wage slips did not correspond with the payments into the bank account, but quite properly conceded that as this was an appeal on Human Rights grounds under Article 8, rather than an appeal under the Immigration Rules, in circumstances where the Judge did accept that the payments into the bank account were the Sponsor's wage, that the judge

would have reached the same conclusion in any event on the Human Rights issue. Despite the discrepancies in the payments, the Judge found that there was simply a discrepancy of 86 pence in the payment in December 2014 the most likely explanation which was it had been rounded up by the employer to the nearest pound. In respect of the wage slips for April and May showing that the Sponsor was paid a net monthly pay of £1,335.58, and the Sponsor had paid into the account £1,324.14 for both months had been a discrepancy of £11.44 for both months, which the Judge considered was likely to be a mistake on the part of the employer in a failure to realise that her tax position had changed and the employer had continued to pay her salary based upon the calculation of the previous year's tax. Given those findings, Mr McVeety conceded that in reality, the Judge would have reached the same conclusion in respect of the Article 8 claim in any event. Mr McVeety quite properly conceded that as the appeal was an appeal on Article 8 grounds, given that the Judge had accepted that the payments were payments into the Sponsor's account in respect of her salary, that although the Judge had erred, he conceded that the result would have been the same in any event and that therefore the error was not material. In making such a concession, Mr McVeety quite properly complied with his duty to the court.

6. Miss Patel stated that as the Secretary of State had now conceded that there was no material error, she did not need to reply on behalf of the Claimant.
7. I do find for the purposes of Appendix FM-SE, that there does have to be evidence of the payment of the Sponsor's salary into a bank account, for the months corresponding to the wage slips that have been provided. Indeed, as Mr McVeety quite properly stated, the Rule itself provides that there has to be evidence of payment of "the salary" into the account, and not simply a part of it, or a sum different from the salary. However, Judge Lloyd had the benefit of hearing evidence from the Sponsor and accepted that the Sponsor was illiterate and uneducated and had not therefore checked to ensure that her wages matched her payslip, but that she simply paid the amount she was given by her employer straightaway into the bank and had not taken any money out before she had done so. She was entitled therefore to find, having heard from the Sponsor that she had

paid her salary into the bank account, even though the amount paid into the account for December 2014 was 86 pence more than on the wage slip.

8. She was also entitled to find the most likely explanation for the difference between the wage slips and the payment for April and May 2015 had been the fact that the employer had continued paying her salary on the calculation of the previous tax year, even though she had not heard specifically from the employer in that regard. Judge Lloyd clearly had to do the best that she could on the evidence before her, and accepted that this was in fact the Sponsor's salary being paid into her account. It is not a material error of law for a Judge to find a Sponsor credible.
9. However, I do agree with Mr McVeety that as far as the specific wording of Appendix FM-SE is concerned, that it does require that the salary is paid into the bank account, rather than simply part of it or a different sum, and that therefore technically the provisions of Appendix FM-SE are not met, but in circumstances where the Judge clearly did accept that this was the payment of her salary into the bank account, that the Judge would have found that this was an exceptional or compelling circumstance such as to justify Leave being granted outside of the Immigration Rules under Article 8 in any event, and would have reached exactly the same conclusion, in respect of the decision being a disproportionate interference with the Claimant's Human Rights under Article 8 and that she would have still allowed the appeal on Human Rights grounds. I therefore agree with Mr McVeety's concession that in fact there is no material error of law in this case, as the result would have been the same irrespective, and therefore I dismiss the Secretary of State's appeal.

Notice of Decision

The decision of First-tier Tribunal Judge Lloyd does not contain a material error of law and is maintained.

First-tier Tribunal Judge Lloyd thought it was appropriate for an anonymity decision to be made in this case, given that the Claimant did have 2 young children who are British citizens. In such circumstances, I similarly make an Anonymity Order. Unless and until a Tribunal or

court directs otherwise, the Claimant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies both to the Claimant and to the Secretary of State. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Handwritten signature in black ink, appearing to read 'RFM McGinty'.

Deputy Upper Tribunal Judge McGinty

Dated 15th February 2018