



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/11843/2017

THE IMMIGRATION ACTS

Heard at Civil Justice Centre, Manchester
On 20th July 2018

Decision & Reasons Promulgated
On 26th July 2018

Before

UPPER TRIBUNAL JUDGE COKER

Between

ESTER LIMA DOS SANTOS CARTLIDGE

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: In person with her husband

For the Respondent: Mr Tan, Senior Home Office Presenting Officer

DECISION AND REASONS

1. Ms Cartlidge entered the UK on 5th June 2014 with entry clearance as a partner valid until 22nd February 2017. She made a human rights claim in an application for leave to remain based on her family life with her partner on 16th February 2017. The respondent accepted she was in a genuine and subsisting relationship and that she met the suitability grounds in the Immigration Rules. Her application was refused because she did not meet the financial eligibility criteria in the Immigration Rules. The respondent concluded:

- (i) Although a letter from Civil Service Pensions confirmed her partner's pension at £2447.02 per annum, the respondent did not accept that figure

- because the appellant had failed to provide at least one bank statement in the 12-month period prior to the date of application showing payment of the pension into a bank account;
- (ii) Although income was claimed from savings, personal bank statements were not provided for or from the 12-month period prior to the date of application showing that income relied upon was paid into his personal account.
2. The application was also considered under paragraph EX.1, paragraph 276ADE and generally. The respondent concluded that there were no insurmountable obstacles to the couple relocating to Brazil where they have both lived together over the years since their marriage and that the decision to refuse further leave to remain was not disproportionate.
 3. The appellant appealed the decision which was determined, in accordance with the request made by the appellant, on the papers, for reasons set out in a decision promulgated on 11th December 2018, First-tier Tribunal Judge Hollis dismissed the appeal. The judge considered the two bank statements with the papers dated 16th September 2016 and 11th October 2017 (which post-dates the application). He found they did not sufficiently identify the receipt of the Civil Service Pension. He found that the document relied upon did not include 12 months of bank statements and did not show receipt of £262,116 income as claimed. He also found that the refusal was not a disproportionate interference with family life.
 4. Permission to appeal was sought on the grounds the First-tier Tribunal Judge had failed to have adequate regard to the ISAs held by the appellant's spouse which exceeded £89,000 in value and, with the Civil Service pension, that exceeded the sum required to meet the cash assets required to meet the Immigration Rules. The appellant did not seek permission to appeal against the judge's findings that there were no insurmountable obstacles to the couple relocating or that the decision was disproportionate.
 5. First-tier Tribunal Judge C A Parker granted permission to appeal on the basis that it was arguable the judge had failed to consider whether the complex contested factual matrix rendered a "paper decision".
 6. The ground upon which permission was granted was not that sought by the appellant. Mr Tan did not object to the appellant pursuing her ground of appeal which was that the financial information that had been presented both to the respondent and in the appeal, had been misinterpreted.
 7. In so far as the Civil Service Pension is concerned, paragraph 10 (e) (i) and (ii) of Appendix FM-SE apply. The bank statement showed a payment in to the account which corresponded to the pension information provided. The bank statement (albeit only one provided prior to the application being made) complied with paragraph 10(e)(ii). I am satisfied the judge erred in law in his decision that the pension payments were not made out.
 8. The significant issue is the treatment both by the respondent and the First-tier Tribunal judge of the investments. There was no challenge to the fact that the

appellant's spouse held the investments claimed. The challenge was to the nature of those investments. Mr Cartlidge was adamant that he had been told (by someone he was unable to identify other than it had been in Liverpool when the application was made) that ISAs were adequate evidence of cash savings. He said, in very forceful terms, that he believed the existence of the ISAs had been ignored in the calculations undertaken by both the respondent and the judge and that the ISAs were sufficient evidence of cash savings to meet the requirements of the Immigration Rules.

9. The general provisions of Appendix FM-SE are that

(Paragraph 1) Savings must be held in cash

(Paragraph 10(b)) To evidence dividends ...or other income from investments, stocks, shares, bonds or trust funds: ... (ii) A portfolio report...or a dividend voucher showing the company and person's details with the person's net dividend amount and tax credit, (ii) personal bank statements for or from the 12-month period prior to the date of application showing that the income relied upon was paid into an account in the name of the person or of the person and their partner jointly...

(Paragraph 11)

11. In respect of cash savings the following must be provided:

(a) personal bank statements showing that at least the level of cash savings relied upon in the application has been held in an account(s) in the name of the person or of the person and their partner jointly throughout the period of 6 months prior to the date of application.

(b) A declaration by the account holder(s) of the source(s) of the cash savings.

11A. In respect of cash savings:

(a) The savings may be held in any form of bank/savings account (whether a current, deposit or investment account, provided by a financial institution regulated by the appropriate regulatory body for the country in which that institution is operating), provided that the account allows the savings to be accessed immediately (with or without a penalty for withdrawing funds without notice). This can include savings held in a pension savings account which can be immediately withdrawn.

(b) Paid out competition winnings or a legacy which has been paid can contribute to cash savings.

(c) Funds held as cash savings by the applicant, their partner or both jointly at the date of application can have been transferred from investments, stocks, shares, bonds or trust funds within the period of 6 months prior to the date of application, provided that:

(i) The funds have been in the ownership and under the control of the applicant, their partner or both jointly for at least the period of 6 months prior to the date of application.

(ii) The ownership of the funds in the form of investments, stocks, shares, bonds or trust funds; the cash value of the funds in that form at or before the beginning of the period of 6 months prior to the date of application; and the transfer of the funds into cash, are evidenced by a portfolio report or other relevant

documentation from a financial institution regulated by the appropriate regulatory body for the country in which that institution is operating.

(iii) The requirements of this Appendix in respect of the cash savings held at the date of application are met, except that the period of 6 months prior to the date of application in paragraph 11(a) will be reduced by the amount of that period in which the relevant funds were held in the form of investments, stocks, shares, bonds or trust funds.

(iv) For the purposes of sub-paragraph 11A(c), "investments" includes funds held in an investment account or pension account or fund which does not meet the requirements of paragraphs 11 and 11A(a).

(d) Funds held as cash savings by the applicant, their partner or both jointly at the date of application can be from the proceeds of the sale of property, in the form only of a dwelling, other building or land, which took place within the period of 6 months prior to the date of application, provided that:

(i) The property (or relevant share of the property) was owned at the beginning of the period of 6 months prior to the date of application and at the date of sale by the applicant, their partner or both jointly.

(ii) Where ownership of the property was shared with a third party, only the proceeds of the sale of the share of the property owned by the applicant, their partner or both jointly may be counted.

(iii) The funds deposited as cash savings are the net proceeds of the sale, once any mortgage or loan secured on the property (or relevant share of the property) has been repaid and once any taxes and professional fees associated with the sale have been paid.

(iv) The decision-maker is satisfied that the requirements in sub-paragraphs (i)-(iii) are met on the basis of information and documents submitted in support of the application. These may include for example:

(1) Registration information or documentation (or a copy of this) from the Land Registry (or overseas equivalent).

(2) A letter from a solicitor (or other relevant professional, if the sale takes place overseas) instructed in the sale of the property confirming the sale price and other relevant information.

(3) A letter from a lender (a bank or building society) on its headed stationery regarding the repayment of a mortgage or loan secured on the property.

(4) Confirmation of payment of taxes or professional fees associated with the sale.

(5) Any other relevant evidence that the requirements in subparagraphs (i)-(iii) are met.

(v) The requirements of this Appendix in respect of the cash savings held at the date of application are met, except that the period of 6 months mentioned in paragraph 11(a) will be reduced by the amount of time which passed between the start of that 6-month period and the deposit of the proceeds of the sale in an account mentioned in paragraph 11(a).

10. There is a difference between savings held as cash and savings held other than as cash. Investments including stocks and shares that have been sold/converted into cash can be treated as cash savings that meet the criteria required in Appendix FM-SE of the Immigration Rules provided they have been held in a current, deposit or investment account for at least six months prior to the application being made (see paragraphs 11(a), 11A(a) and 11A (c) of Appendix FM-SE). Evidence of prior ownership would have to be provided. In this case the appellant in her application form described the investments held by her husband as income. The respondent was correct to identify that 12 months of bank statements showing that level of income had not been produced and thus was correct to refuse the application on that basis. The First-tier Tribunal judge's decision to the same effect was correct.
11. Before me the appellant's spouse confirmed that the claim was not that there was income of £223,116 but that he held ISA's with High Fidelity and M & S that, together with the Civil Service Pension (and even without the Civil Service Pension), would meet the requirements of the Immigration Rules. It is correct that if those ISAs were cash ISAs, the financial criteria in the Immigration Rules would be met. They are not, however cash ISAs. They are stocks and shares ISAs. As investors are repeatedly told, stocks and shares may go down as well as up. Therefore, although the stocks and Shares ISAs had the value ascribed to them by Fidelity and M & S at the point in time that the valuation was sought, they are not the equivalent of cash. If some disaster were to strike they could become valueless. There was no evidence of any dividends payable or drawn-down arrangement.
12. The Immigration Rules recognise this by, in paragraph 11A (c) requiring such funds to have been transferred into cash and held in cash 6 months prior to the application for leave being made.
13. Mr Cartlidge was adamant that he had been told that ISAs were a satisfactory evidence of cash to meet the Rules. Cash ISAs are sufficient to meet the requirement of cash; but stocks and shares ISAs are not, they are not cash savings. If he was told that *all* ISAs were sufficient to meet the criteria, that was incorrect.
14. It is difficult to understand what the couple are living on given that the current bank account is overdrawn and the investments, although high, do not seem to be paying dividends or have any withdrawals. I do note that there are only two bank statements produced and these may give a distorted picture of the couple's day to day living. The fact that Mr Cartlidge is, according to the two bank statements, continuously in overdraft is not a matter that I have taken into account.
15. Although the First-tier Tribunal judge erred in law in his assessment of the Civil Service Pension, that error is not material. The appellant does not meet the criteria in the Immigration Rules. That was the only basis upon which this appeal was brought before me. It follows that the dismissal of her appeal against the refusal of her human rights claim by the First-tier Tribunal judge stands.

Conclusions:

The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.

I do not set aside the decision; the decision of the First-tier Tribunal stands. The appeal is dismissed.

A handwritten signature in cursive script, appearing to read 'Jme Coker'.

Date 23rd July 2018

Upper Tribunal Judge Coker