



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

Appeal Number: HU/07459/2020
UI-2021-000802

THE IMMIGRATION ACTS

**Heard at: Field House
On: 14th March 2022**

**Decision & Reasons Promulgated
On: 7th June 2022**

Before

**Upper Tribunal Judge Bruce
Deputy Upper Tribunal Judge Cotton**

Between

Rujina Khanom

Appellant

And

Entry Clearance Officer

Respondent

For the Appellant: Mr S. Whitwell, Senior Home Office Presenting Officer

For the Respondent: Mr A. Kalam, Kalam Solicitors

DECISION

1. The Appellant is a national of Bangladesh born on the 5th July 1992. She has applied for leave to enter the United Kingdom as the spouse of a Mr Maruf Ahmed, a national of Bangladesh present and settled in this country.
2. The Appellant's application for leave to enter was refused by an Entry Clearance Officer (ECO) based in Sheffield on the 7th August 2020. The

reason given for that refusal was that the application had been supported by a false document relating to the employment and earnings of Mr Maruf Ahmed.

3. Mr Maruf Ahmed had provided, in support of his wife's application, evidence of employment as a packer at DS Beghal & Sons. He asserted this evidence to demonstrate annual earnings of £19,240. The ECO stated that "HMRC checks conducted by this office show that you did not earn the amount stated or evidenced by the documents you have provided. The details of these verification checks are held in a Document Verification Report (DVR) and this document is held by this department". The application was therefore refused on grounds of 'suitability' and that the financial requirements of the rules could not be met.
4. The Appellant appealed to the First-tier Tribunal and in due course the matter came before First-tier Tribunal Judge Manuell. Judge Manuell heard oral evidence from Mr Maruf Ahmed and had regard to the documentary evidence before him. Having done so he concluded that the Sponsor was in fact employed as a packer at DS Beghal & Sons. He rejected the refusal on suitability grounds, finding that there had been no dishonesty on the part of the Appellant or her husband. He was not however satisfied that the financial requirements for entry as a spouse had been met. The Judge's analysis of the documentary evidence was that in the six months immediately prior to the application being made Mr Maruf was earning only £11,470 per annum: "well short of the required minimum". The appeal was thereby dismissed.
5. The Appellant sought permission against the decision of Judge Manuell on the grounds that he misunderstood the evidence, and misapplied the provisions of Appendix FM-SE.
6. By a letter dated the 25th November 2021 the Secretary of State indicated that she did not oppose the grounds of appeal; an error of law was accepted to be made out and the Tribunal were invited to remake the decision below. Before us Mr Whitwell was not sure of the basis upon which that concession was made, but with his customary fairness indicated that he did not intend to go behind it at this late stage; on the facts of the case, any error in approach would be established in the process of remaking.
7. We heard submissions from the parties and having done so we indicated that we would allow the Appellant's appeal, substituting the decision of the First-tier Tribunal with one allowing the Appellant's appeal on human rights grounds.

Discussion and Findings

8. There were two reasons given for the refusal. The first, that the Appellant should be refused on suitability grounds, has been resolved in her favour. Judge Manuell rejected the allegation of dishonesty made by the ECO and the Respondent has not sought to challenge it by way of the Rule 24 response. The only issue we are required to consider is whether, on a balance of probabilities, the Appellant has demonstrated that she meets the financial requirements for leave to enter as a partner.
9. The Appellant was required to demonstrate that her family income met or exceeded the 'minimum income requirement' set out in Appendix FM of the Immigration Rules. At the date of application this was £18,600. Appendix FM-SE sets out the specified evidence which had to be presented as evidence of such income, and it stipulates that it must be demonstrated with reference to the six months immediately prior to the application being made. The application was made on the 28th March 2019. The relevant period for the purposes of assessing the family income was therefore identified as 28th September 2018 - 28th March 2019.
10. The evidence produced by Mr Maruf Ahmed about his income consisted of the following items:
 - Weekly payslips covering the entire period showing net pay of £338.88 (the gross figure is given as £370)
 - Photocopies of the cheques he was given each week, along with the receipt showing their deposit in the bank
 - Barclays bank statements covering the entire period showing weekly deposits of £338.88
 - A letter from DS Beghal & Sons dated 22nd March 2019 stating that he had been employed there as a packer on a full time basis since the 27th August 2018. He works 40 hours per week at an hourly rate of £9.25 and his gross income per week is £370
 - P60 (and letter from HMRC dated 18th August 2020) stating that his earnings in the year ending April 2019 were £11,470
11. It was this last item that appeared to have caused the difficulty. £11,470 is, as Judge Manuell observed, "well short of the required minimum" of £18,600. There is an obvious discrepancy between this evidence, produced by HMRC, and the rest of the material summarised above, which indicates that Mr Maruf Ahmed in fact earned more like £19,000 per annum.
12. The answer to this puzzle is in fact very straightforward. It is to be found in the letter from DS Beghal & Sons, and indeed the original application for entry clearance. It is that the Sponsor only started working for the firm right at the end of August 2018. His P60, issued at the beginning of April 2019, only reflects those 7 months of work. If £11,470 is divided by the 31 weeks that he worked before the end of

the tax year, the figure comes to £370. Which tallies precisely with what all the other evidence says. Quite why Judge Manuell was asked to consider alternative and convoluted explanations is unclear. Various arguments put, about tax codes and whether DS Beghal & Sons did everything they were supposed to do as employers, seem wholly irrelevant once it is appreciated that the figure given by HMRC had to be assessed pro rata. The rules require applicants to show annual earning capacity with reference only to that 6 month period immediately prior to the application being made, and this Mr Maruf Ahmed has done. We are satisfied that the financial evidence he has produced has discharged the burden of proof. That being the only matter left in issue before us, we allow the appeal.

Decisions

13. The decision of the First-tier Tribunal is set aside by consent.
14. We substitute the decision on human rights grounds by allowing the Appellant's appeal.
15. There is no order for anonymity.



Upper Tribunal Judge Bruce
14th March 2022