



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: OA/01290/2013

THE IMMIGRATION ACTS

Heard at Field House
On 21 May 2014
Determination prepared 21 May 2014

Determination Promulgated
On 2 July 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE DAVEY

Between

ENTRY CLEARANCE OFFICER - NAIROBI
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

MRS ASLI MOHAMED JAMAC

Respondent

Representation:

For the Appellant: Mr Walker, Senior Presenting Officer
For the Respondent: Ms F Allen, Counsel instructed by CNA Solicitors

DETERMINATION AND REASONS

1. In this determination I shall refer to Mrs Jamac as the claimant and to the Appellant as the ECO.
2. The claimant, a national of Somalia, date of birth 9 January 1982, applied for entry clearance as a partner under the Immigration Rules which was refused by the ECO on 14 November 2012. An appeal against that decision came before First-tier Tribunal Judge R Chowdhury (the judge) who on 9 October 2012 dismissed the

appeal with reference to the Immigration Rules but allowed the appeal under Article 8 of the ECHR.

3. The ECO applied for permission to appeal which was granted by First-tier Tribunal Judge Colyer on 16 January 2014.
4. On 6 March 2014 for reasons which were given in writing, dated 2 April 2014, I found that the judge had made an error of law in respect of dealing with the issues arising under Article 8 of the ECHR. At the hearing before me Ms Allen in the light of information that had become clear sought permission to raise a cross-challenge to the judge's decision under the Immigration Rules. Absent of objection from Mr Walker, I decided her application should be allowed because, although it could have been raised at an earlier time, there was no prejudice to the ECO : The very information relied upon by Ms Allen was in the evidence, before the ECO, at the material time. Therefore the Judge made a mistake made of fact which amounted to an error of law in the judge's decision.
5. In the circumstances, Ms Allen properly submits, by reference to the contemporary documentation and information, which related back to the date of the Respondent's decision, the evidence showed the Sponsor was able to show that he met the necessary financial threshold of £18,600 at the date of the ECO's decision. The evidence, referred to in the decision of the judge, indicated two forms of employment, one of which had been probationary but had become full-time, and that the combined totals of employment as demonstrated by payslips and P60s showed in excess of the £18,600 requirement.
6. It is apparent, I accept what Ms Allen also says about the matter, that she raised the issue of the Sponsor's two employments. It appears that some of the judge's consideration of the evidence got sidetracked by the absence of a relevant P60, for the point was forgotten by the judge in the determination. The judge reached the erroneous conclusion that at the date of the Respondent's decision the combined earnings were £18,242 odd and below the required threshold. There was no other

basis to dismiss the appeal and in the circumstances it is unfortunate that the point had not been picked up in the First-tier Tribunal.

7. The original Tribunal cannot stand and it was agreed that the decision should be remade, on the submissions made to me.
8. On the unchallenged evidence in being at the date of the Respondent's decision ,I find, each relevant requirement of paragraph 281 of the Rules was met. In those circumstances it is also said that there is no need to consider the issues of proportionality under Article 8 with reference to the earnings because quite simply the matter has been settled under the Rules. It is to be noted that the combined position, on behalf of the representatives before me, was that that was the established position at the date of the Respondent's decision.
9. The following decision is substituted. The appeal by the Claimant is allowed

ANONYMITY ORDER

No anonymity order was made and none has been requested nor did it seem to be necessary or appropriate to do so.

TO THE RESPONDENT

FEE AWARD

Since I have been remaking the decision I have also considered the issue of whether a fees award was appropriate. In the circumstances of the appeal when the documentation was provided it seems to me appropriate to make a fee award in the sum of £140 in favour of the Appellant because the material was before the ECO and it was in being at the date of the ECO's decision.

Signed

Date 24 June 2014

Deputy Upper Tribunal Judge Davey