



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: OA/08575/2013

THE IMMIGRATION ACTS

Heard at Field House  
On 5<sup>th</sup> September 2014

Determination Promulgated  
On 12<sup>th</sup> September 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

MRS MANPREET KAUR  
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

ENTRY CLEARANCE OFFICER, NEW DELHI

Respondent

Representation:

For the Appellant: Mr Samra (Solicitor)  
For the Respondent: Mr Mills (HOPO)

DETERMINATION AND REASONS

1. This is an appeal against the determination of First-tier Tribunal Phull promulgated on 30<sup>th</sup> April 2014, following a hearing at Birmingham on 22<sup>nd</sup> April 2014. In the determination, the judge dismissed the appeal of Mrs Manpreet Kaur who

subsequently applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

### **The Appellant**

2. The Appellant is a citizen of India, who was born on 21<sup>st</sup> October 1984 and she appeals against the refusal of entry clearance to enable her to join her British citizen husband, who is present and settled in the UK, namely, Mr Hardip Singh.

### **The Appellant's Claim**

3. The Appellant's claim is that she enjoys a subsisting marriage relationship with Mr Hardip Singh, and that they are in regular daily contact with each other. She works as a doctor in India. He works for Sandwell Travel Limited in West Bromwich. She meets all the requirements of the Rules, including maintenance and accommodation, and the refusal letter was wrong in stating that the Appellant had failed to show that she could meet the maintenance requirements and also had failed to satisfy the Entry Clearance Officer that the couple had a subsisting relationship (see para 9 of the determination).

### **The Judge's Findings**

4. The judge found that the marriage was indeed genuine and subsisting. She heard evidence from Mr Hardip Singh, the sponsoring husband. She found "his explanation plausible that he calls daily because he uses the family lyca mobile to speak to the Appellant .... There was no real challenge to his evidence" (para 13). The judge held that the marriage was subsisting and there was an intention to live together permanently (para 15).
5. Where the Appellant did, however, fail to meet the Rules, was in being able to show, according to the judge, compliance with the relevant financial requirements, of £18,000 per annum "because there is a clear lack of documentary evidence relating to the Sponsor's finances for the requisite period" (para 21).
6. In relation to Article 8, the Appellant could not succeed here either because there simply was not the documentary evidence to make out an arguable case (para 22).

### **Grounds of Application**

7. The Grounds of Appeal state that the judge erred as a matter of law in deciding that the Appellant could not meet the maintenance requirements.
8. On 13<sup>th</sup> June 2014, permission to appeal was granted. It was said that the Entry Clearance Officer should have applied the evidential flexibility criteria. There also should have been a reasoned Article 8 assessment and proportionality findings, which stood separately from the findings under the Immigration Rules. It was also said that, the judge decided the appeal under the Immigration Rules but failed to give due weight to the documentary evidence before him when looking at Article 8.

9. On 1<sup>st</sup> July 2014, a Rule 24 response was entered.

### **The Hearing**

10. At the hearing before me on 5<sup>th</sup> September 2014, Mr Samra submitted that there was a fundamental error in the judge's consideration of the facts. The Appellant's case had never been that his income went directly into his bank account. The judge was wrongly searching for evidence of his income in the bank statements. The Appellant's case had always been that he was paid cash in hand and that he used the money for clothing and his needs as and when necessary. The judge records at paragraph 6 and at paragraph 19 that the salary is deposited in the bank account. This is simply not true.
11. The Appellant's own bundle (at page 2, para 9, and at paragraphs 22 and 23), makes it clear that the money is paid cash in hand. At paragraph 23 he states "I am paid cash by my employer and utilise these monies as and when for my general expenses such as clothes ..." The judge was simply factually wrong to suggest that the money went into the bank account.
12. Second, the Immigration Directorate Instructions make it clear (at 9.3.6) that "self-employed income can be cash in hand if the correct tax is paid" (see IDI dated December 2013).
13. Third, there was evidence that tax is indeed paid because this appears in the letter in the bundle dated 25<sup>th</sup> June 2014, which shows that the Appellant's income was £18,720 and he paid tax of 1,854 pence from HMRC itself.
14. Finally, if the Appellant did not meet the Rules, then only in the alternative, would the Appellant suggest that regard should be given to the "exceptional requirements" and under this he should succeed under Article 8.
15. For his part, Mr Mills made two submissions. First, that this was an out of country appeal and the letter that had been drawn attention to from the HMRC was dated 25<sup>th</sup> June 2014 when the appeal was in April 2014 and the decision being challenged was dated 6<sup>th</sup> March 2013. To this, Mr Samra immediately replied that there was an earlier letter in the bundle of 30<sup>th</sup> October 2012 (see page 34 of the bundle) and this referred to the Appellant's six month's gross salary of £1,560, and if one multiplied this by six then the figure was exactly the same as £18,700, which is a figure given in the latest HMRC letter of 25<sup>th</sup> June 2014. The earlier letter of 30<sup>th</sup> October 2012 simply referred to a figure of £10,444 but this was because the Appellant had only been working for six months at this stage. Mr Mills submitted that the second reason why this appeal could not succeed was because there were no payslips to indicate what the gross income was. To this Mr Samra immediately replied that the payslips were indeed in the bundle at pages 57 to 63 and these again showed an income of £1,560 in gross. Mr Mills submitted that I should dismiss the appeal.

### **Error of Law**

16. I am satisfied that the making of the decision by the judge involved the making of an error on a point of law (see Section 12(1) of **TCEA [2007]**) such that I should set aside this decision and re-make the decision. The reason is quite simply the factual error by the judge, made at paragraphs 6 and 19 that the Appellant's salary went directly into his bank account. It did not.
17. It was never the Appellant's case that this was so. The money was given cash in hand. He was entitled to be so paid because this is clear from IDI at paragraph 9.3.6. The only caveat is that where a person is paid cash in hand that person must make sure that a tax is properly paid on the income and there have been consistent letters from the HMRC to confirm that tax is indeed paid (see page 34 for the letter dated 30<sup>th</sup> October 2012) and the latest letter of 25<sup>th</sup> June 2014.
18. This appeal only had to be decided on a balance of probabilities, and on that standard, it was clear that the Appellant was in receipt of income of £18,700.

### **Re-making the Decision**

19. I have re-made the decision on the basis of the findings of the original judge, the evidence before her, and the submissions that I have heard today. I am allowing this appeal for the reasons that I have set out above. The Appellant clearly earns £18,700, and this was evidenced by way of documentary proof before the judge. It was never the Appellant's case that his money went into his bank account.
20. Proof of such earnings is not to be found in bank statements. Proof of such earnings is to be found in HMRC letters and in the tax accountant's letters and in the payslips which appears at pages 57 to 63. Accordingly, the Appellant succeeds under the Rules. Since he succeeds under the Rules, he must succeed under Article 8 as well, were that to be in issue, which it is unnecessary for me to decide.

### **Decision**

21. The decision of the First-tier Tribunal involved the making of an error of law such that it falls to be set aside. I set aside the decision of the original judge. I re-make the decision as follows. This appeal is allowed.
22. No anonymity order is made.

Signed

Date

Deputy Upper Tribunal Judge Juss

11<sup>th</sup> September 2014