



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: OA/10127/2013

THE IMMIGRATION ACTS

Heard at Glasgow
on 22nd July 2014

Determination promulgated
On 24th July 2014

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

ENTRY CLEARANCE OFFICER ISLAMABAD

Appellant

and

SHAZIA AHMED

Respondent

For the Appellant: Mrs S Saddiq, Senior Presenting Officer
For the Respondent: Mr A J Hussain, of Legal and Legal, Solicitors

DETERMINATION AND REASONS

1. The parties are as described above, but are referred to in the rest of this determination as they were in the First-tier Tribunal.
2. The Appellant sought entry clearance as a spouse. The ECO refused that application by notice dated 4th March 2013, pointing out, amongst other reasons, that the

Sponsor's personal bank statements did not show deposits corresponding to or reflecting the payments indicated on his payslips submitted for the relevant period: "The deposits in question only reflect these payments for one month (the most recent month) covered by the bank statements".

3. Within his Grounds of Appeal to the First-tier Tribunal the Appellant accepted that the Sponsor's bank statements did not reflect his wages. That was said to be because he was being paid cash in hand for two jobs, so deposits into his account "did not correspond exactly to the amount paid in wages".
4. Perhaps because there was no representation of the ECO in the First-tier Tribunal, some of the more relevant features of the case appear to have been rather obscured. In his determination promulgated on 10th March 2014 Judge P A Grant-Hutchison was prepared to find that the "extraordinary coincidence" the Sponsor had been paid the exact same salary by two different employers was just that, and not a ground for refusing the application. He went on to find at ¶16 "from the documents provided and the Appellant's [Sponsor's?] statement" that "the necessary documents were in fact lodged".
5. The Appellant produced voluminous evidence, much of it inadmissible and irrelevant because it postdated the application. It is not clear whether the judge thought that the required correspondence between the Sponsor's payslips and his personal bank statements was shown by the evidence before the ECO, or by the later evidence. But the lack of correspondence on the evidence before the ECO was conceded by the Appellant in her Grounds of Appeal; and evidence of a later period of correspondence was neither admissible nor relevant.
6. The ECO's Grounds of Appeal are that the judge failed to have regard to the evidential requirements set out in Appendix FM-SE; did not have regard to the relevant date being that of application; did not address the relevant evidence at that date; and as it followed that the Appellant had not established the Sponsor's income at the date of application, the appeal could not properly have been allowed.
7. On 8th April 2014 Designated Judge D Taylor granted permission to appeal to the Upper Tribunal, on the view that the judge arguably failed to ascertain the level of the Sponsor's income as at date of application and failed to have full regard to the requirements of the Rules.
8. Further to the grounds, Mrs Saddiq submitted that the judge appeared to have misled himself (or to have been misled) into thinking that the one crucial issue was whether the coincidence of the Sponsor being paid exactly the same amount in cash by two different employers had an innocent explanation. There was another decisive point which ended up being blurred: the cash payments to the Sponsor could not meet the requirements of the Rules, not because they were in cash or because of the coincidence, but because they were not reflected in the bank statements for the necessary six month period.

9. Mrs Saddiq said that there was also error in that the judge expressed his concern about “this extraordinary coincidence” but went on to hold that he was satisfied that it was not a ground for refusing the application, without giving any reason.
10. Mr Hussain said that the documentary evidence in support of the conclusions in the determination was in the Appellant’s bundle. This was “not new evidence” but “elaborated documents” or “additional documents” which could properly be taken into account as well as the evidence supplied to the ECO. He was unable to refer me to any legal authority to support that route for admission of further evidence.
11. Mr Hussain next submitted that even if further documents should not have been taken into account, there was enough evidence at the time of application to enable it to be allowed. The Appellant provided contracts, employers’ letters, payslips, forms P60 and so on. It was in order to take into account payments cash in hand, as long as it was shown that the tax was paid on them. The ECO’s concern over the coincidence of wages amounted to no more than a suspicion, and the judge was entitled to accept the Sponsor’s explanation.
12. It emerged eventually during the submission that it was accepted that the Sponsor had not provided corresponding bank statements and wage slips over a period of six months to date of application, as required by the Rules, but for one month only, as mentioned above. Further documents might have shown correspondence for a later 6 month period only. I observed to Mr Hussain that once that point was identified, it did not appear that there was anything wrong with the ECO’s decision or any legal basis to reach any other conclusion.
13. Mr Hussain moved on to a submission that the appeal might have been allowed through the exercise of discretion available under the Rules. He was unable to refer me to any specific provision of the Rules conferring such discretion, and he accepted that the case had not been argued in the First-tier Tribunal on the basis that any such discretion existed. Finally, he pointed out that the Rules impose detailed and difficulty requirements and said that the outcome was harsh and unfair. Once the Sponsor became aware that he had to show a correspondence between his wages and payments into his bank account, from then on he ensured that was so. It had been natural enough not to do so while was being cash in hand. There was now such evidence extending over a period more than the six months required.
14. I indicated that the ECO’s appeal would be allowed and the determination of the First-tier Tribunal reversed.
15. The ECO was plainly correct to reject the application on the basis of the evidence supplied, because the bank statements did not show deposits corresponding with the payslips.
16. The First-tier Tribunal had no power to admit evidence or to allow an appeal based on evidence meeting the requirements of the Rules subsequently to the date of application. The Rules require the evidence to be submitted with the application.

17. The case was not stated in the First-tier Tribunal on the basis of discretion of the ECO or the FTT to overlook shortcomings in the evidence. I am not satisfied that there is any such discretion, but even if there was, it is too late to raise that case now.
18. The requirements of the Rules may be detailed and cumbersome but the FTT and UT do not have power to override them by some general overriding principle of fairness, nor by evidence relating to later dates and not supplied with the application. The remedy in cases like this is not by way of appeal to the FTT or to the UT but by way of a properly supported application.
19. It may be that the judge erred in giving no reason for accepting the “extraordinary coincidence” about the two wages, but that point is not raised in the Grounds; and given the other findings herein, it need be taken no further.
20. The determination of the First-tier Tribunal is **set aside** and the following determination is substituted: the appeal, as originally brought by Shazia Ahmed to the First-tier Tribunal, is **dismissed**.
21. No order for anonymity has been requested or made.



23 July 2014
Upper Tribunal Judge Macleman