



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: OA/10814/2013

THE IMMIGRATION ACTS

Heard at Field House
On 6 August 2014

Determination Promulgated
On 12 August 2014

Before

UPPER TRIBUNAL JUDGE MOULDEN

Between

THE ENTRY CLEARANCE OFFICER - NEW DELHI

Appellant

and

MR BHUCHUNG SHERPA
(No Anonymity Direction Made)

Respondent

Representation:

For the Appellant: Mr S Kandola a Senior Home Office Presenting Officer

For the Respondent: the respondent did not appear and was not represented

DETERMINATION AND REASONS

1. The appellant is the Entry Clearance Officer in New Delhi ("the Entry Clearance Officer"). The respondent is a citizen of India who was born on 25 March 1981 ("the claimant"). The Entry Clearance Officer has been given permission to appeal the determination of First-Tier Tribunal Judge Talbot ("the FTTJ") who allowed the claimant's appeal against the Entry Clearance Officer's decision of 15 April 2013 to refuse him entry clearance to the UK as the wife of his sponsor Mrs D T Bhutia.

2. The Entry Clearance Officer refused the application because the claimant had not established, by the required means, that the sponsor had the necessary income of at least £18,600 per annum. The sponsor had claimed to earn in excess of this amount from two jobs. It was accepted that she had established an income of £13,000 per annum from the first of these but the second, from a company called Wok to Work where she claimed an income of £550 per month, had not been established because only very poor quality photocopy payslips had been supplied and there were no matching salary deposits shown in the sponsor's bank account.
3. The claimant appealed and the decision was maintained by the Entry Clearance Manager. The appeal came before the FTTJ on 24 February 2014. Both parties were represented and the sponsor gave evidence. On the balance of probabilities the FTTJ found that the poor quality photocopy payslips were in fact the originals provided by her employer. Whilst the personal bank statements did not show receipt of the whole of every salary payment from Wok to Work the FTTJ accepted the sponsor's evidence that prior to the date of the application this salary was paid in cash and that identifiable payments into the personal bank account were cash payments in made by the sponsor from her salary and that these reflected, not wholly but to a substantial degree, the cash she received from this employment.
4. The FTTJ found that this evidence was sufficient to establish that the claimant met the financial requirements of the Rules and he allowed the appeal.
5. The Entry Clearance Officer applied for and was granted permission to appeal arguing that the FTTJ erred in law by not having sufficient regard to the precise requirements of the Rules and that the claimant had failed to comply with these. The FTTJ had not made clear the date at which the evidence was being considered which should have been the date of the application.
6. Since permission to appeal to the Upper Tribunal was granted the claimant's solicitors have sent a letter dated 8 July 2014 stating that he is withdrawing his appeal and that the sponsor will not be attending the hearing. The Upper Tribunal responded stating that the appeal could not be withdrawn because the Entry Clearance Officer had been granted permission to appeal against the decision of the FTTJ allowing the claimant's appeal.
7. The court clerk telephoned the claimant's solicitors who confirmed that this was the position and that neither they nor the sponsor would be attending. Mr Kandola spoke to the claimant's solicitor who informed him that the claimant was not resisting the Entry Clearance Officer's appeal. It may be that the claimant has made a fresh application but this has not been confirmed.
8. I find that the FTTJ erred in law. On the evidence it was not open to him to conclude that the claimant satisfied the detailed financial requirements set out in the Rules. The sponsors pay from Wok to Work had not been paid into her

personal bank account for the relevant period prior to the date of the application on 24 January 2013 which was either a period of 12 months or a lesser period if she had not been employed with this employer for 12 months. It was difficult to identify the precise qualifying period in the absence of any letter from this employer setting out the period of the sponsor's employment and when it commenced. Furthermore, the Lloyds Bank personal bank statements submitted did not cover the required period. They covered a period from 10 July 2013 to 5 February 2014 but should have covered a period of 12 months preceding the date of the application. Finally, it was not open to the judge to conclude that the post application payslips from this employer which had been produced provided adequate evidence of pre-application pay.

9. Having found that the FTTJ erred in law I set aside the decision. The claimant does not oppose this. I remake the decision and dismiss the claimant's appeal for the reasons I have given.

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Signed
Upper Tribunal Judge Moulton

Date 7 August 2014