



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: OA/13758/2013

THE IMMIGRATION ACTS

Heard at: Manchester
On: 30th June 2014, 5th August 2014

Determination Promulgated
On: 8th August 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE BRUCE

Between

Shahzad Ahmad
(no anonymity order made)

Appellant

and

Entry Clearance Officer, Islamabad

Respondent

For the Appellant: IIAS Mr Usman (30th June) and Mr Muhammad (5th August)
For the Respondent: Senior Home Office Presenting Officers Ms Johnstone (30th June) and Mr McVeety (5th August)

DETERMINATION AND REASONS

1. The Appellant is a national of Pakistan date of birth 17th January 1983. He has permission to appeal against the decision of the First-tier Tribunal (Judge Munonyedi) to dismiss his appeal against the Respondent's decision to refuse to grant him entry clearance as a spouse.
2. The Respondent's sole ground for refusal was maintenance. The Respondent did not consider that the Appellant had demonstrated that his UK Sponsor, Ms Sana Aslam, was earning at or over the £18,600 required by paragraph E-ECP 3.1. She had submitted evidence showing that she is employed by the Central

Compensation Office earning £20,000 per annum but the evidence supplied did not meet the requirements of Appendix FM-SE. The date of this decision was 24th May 2013.

3. The Appellant appealed and the matter was determined on the papers. The First-tier Tribunal correctly directed itself that it could only take into account evidence pertaining to the date of decision. In this regard the Judge recorded that the only evidence he had before him relating to Ms Aslam's employment was her P45 and five payslips relating to an earlier employment with Comet, and copies of her bank statements. These were not sufficient to discharge the burden of proof and the appeal was dismissed.
4. The grounds of appeal are that there has been a procedural impropriety. If the documents listed in the determination were indeed the only ones before the Judge then it would appear he did not have the Respondent's bundle or the two additional appeal bundles submitted by the Appellant which contained further evidence as to the Sponsor's employment situation at the date of decision.
5. In granting permission to appeal to this Tribunal Judge Pooler of the First-tier Tribunal noted that the Tribunal record indicates that the documents mentioned in the grounds of appeal were indeed received by the Tribunal before the matter went before Judge Munonyedi. It is not clear whether those documents were before the Judge and he failed to take them into account, or whether they were not placed on the file before it was passed to him. Either way, there is an error of law. The file contains a number of relevant documents above and beyond the Comet payslips and P45. I therefore set the decision aside.
6. At the hearing on the 30th June 2014 Mr Usman identified the relevant documents as being six payslips from the Central Compensation Office dated September 2012-February 2013, a letter from that organisation confirming that the Sponsor had been employed there since August 2012 and that her salary was £25,000 (these were all in the Respondent's bundle), a P60 for the year ending April 2013, further payslips from March - May 2013, bank statements showing these salaries deposited in Ms Aslam's account. Calculating back the Sponsor's payslips indicated a gross annual salary of £18,630. The disparity between this figure and that cited by the employer in their letter was accounted for by the fact that Appendix FM-SE requires the decision-maker to look back at previous employment, in this case Ms Aslam's lower paid work at Comet. Whichever figure was correct, Ms Johnstone conceded that if the documents were genuine, the Appellant's appeal must succeed.
7. Ms Johnstone requested that the Respondent be given time to conduct checks on the documents. As the matter had been a paper case in the First-tier Tribunal the Respondent had not considered this post-decision evidence. Mr Usman protested by pointing out that these documents had all been served in compliance with directions and that the Respondent had been given plenty of

time to conduct verification checks. Whilst Mr Usman was correct I considered it appropriate to allow Ms Johnstone time to verify the P60 with HMRC, leaving no room for doubt and hopefully facilitating the speedy entry of the Appellant, already separated from his wife for approaching two years. Ms Johnstone requested an adjournment of three weeks in order to do this.

8. Unfortunately the results of the verification checks were not available when the hearing resumed on the 5th August. Mr McVeety requested yet more time. Mr Muhammad rightly objected. The Respondent has had an opportunity to conduct HMRC checks. It is open to the Respondent to pursue those enquiries and if the results are adverse to the Appellant it is in the Respondent's power to refuse to issue a visa pursuant to this determination.

Decisions

9. The decision of the First-tier Tribunal contains an error of law and it is set aside.
10. I re-make the decision by allowing the appeal.

Deputy Upper Tribunal Judge Bruce
5th August 2014