



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: OA/15047/2013

**THE IMMIGRATION ACTS**

Heard at Bradford  
On 25<sup>th</sup> September 2014

Determination Promulgated  
On 16<sup>th</sup> October 2014

Before

UPPER TRIBUNAL JUDGE D E TAYLOR

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MOHAMMAD MOSLEH AHMED

Respondent

**Representation:**

For the Appellant: Mr Diwnycz, Home Office Presenting Officer  
For the Respondent: Mr Janjua instructed by Bashir Consultancy

**DETERMINATION AND REASONS**

1. This is the Secretary of State's appeal against the decision of Judge Hillis made following a hearing at Bradford on 28<sup>th</sup> May 2014.

## **Background**

2. The Claimant is a citizen of Bangladesh born on 24<sup>th</sup> January 1965. He applied to come to the UK as the spouse of a British citizen but was refused on the grounds that the Entry Clearance Officer was not satisfied that the Sponsor was employed in two places of work as claimed.
3. The Entry Clearance Officer was also not satisfied that the Claimant had met the English language requirement.
4. The decision was reviewed by an Entry Clearance Manager on 11<sup>th</sup> May 2014 who stated that the Claimant had now retaken the English language test and he was satisfied that the relevant paragraph of the Immigration Rules had been met.
5. The judge considered the evidence and was satisfied that the Sponsor was employed as claimed and that she had a combined income of £19,200. He said that he was satisfied that the requirements of the Rules were met and allowed the appeal both under the Immigration Rules and under Article 8.

## **The Grounds of Application**

6. The Secretary of State sought permission to appeal on the grounds that the Rules of specified evidence were comprehensively set out in Appendix FM/SE but the Tribunal made no findings on the issue. It was not clear what the Sponsor's gross annual income was at the date of application. Furthermore, in allowing the appeal on Article 8 grounds the judge had erred. There was no prejudice to the Appellant and Sponsor continuing their family life in Bangladesh and no reason why the Appellant could not submit a further application or why it would be unjustifiably harsh to require him to do so.
7. It was also argued that the judge had failed to deal with the ground of refusal relating to the English language test.
8. The Claimant served a reply. He says that he provided all of the documents as prescribed by Appendix FM/SE including the payslips, the letters from the employers, the P60 and the Inland Revenue. The application had been refused as a consequence of a mistake by the Secretary of State. She confused the Sponsor's home address with one of her employer's address. She works for two employers who are in partnership together and her working hours are split between the two different locations.

## **Submissions**

9. Mr Diwnycz said that he had checked with HMRC who had confirmed that the Sponsor had earned the claimed income of £19,202 gross for the tax year 2013 - 2014. He did not seek to pursue any challenge on the basis that the substantive rule was not met.

10. So far as the required documentation was concerned he had no papers in the Entry Clearance Officer's bundle other than those provided by the Entry Clearance Officer. He could make no submissions as to whether they had been produced or not.
11. Mr Janjua said that Bashir Consultancy was not acting for the Claimant at the time of the application but he was instructed that all of the relevant documents had been produced. He observed that no issue had been raised by the Entry Clearance Officer in relation to the lack of specified documentation. If documents had been missing, it would have been a Ground for Refusal.

### **Findings and Conclusions**

12. The grounds relating to the English language test are misconceived since this was not an issue before the Immigration Judge, having been conceded by the Entry Clearance Manager.
13. It is not now being asserted that the Sponsor was not earning the amounts claimed.
14. So far as the lack of specified evidence was concerned, this was not a ground for refusal by the Entry Clearance Officer and the judge cannot be in error in not addressing it. In any event there was no reason to suppose that the evidence had not been produced because, if any was missing, the Entry Clearance Officer would have said so. Moreover the Entry Clearance Manager did not mention any lack of documentation either, referring only to the Entry Clearance Officer's concerns about the reliability of the employment and income claimed. The Appellant asserts that he provided all of the relevant documentation as prescribed in Appendix FM/SE in his response, and there is no basis for disbelieving him.
15. Since the judge found that the requirements of the Immigration Rules had been met it was not an error for him to allow the appeal on Article 8 grounds since it would clearly be disproportionate to refuse entry clearance to a person who had met the requirements of the Rules.

### **Decision**

16. The original judge did not err in law and the decision stands. The Claimant's appeal is allowed.

Signed

Date

Upper Tribunal Judge Taylor