



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: OA/01482/2014

THE IMMIGRATION ACTS

Heard at Bradford
On 17th February 2015

Determination Promulgated
On 24th February 2015

Before

UPPER TRIBUNAL JUDGE D E TAYLOR

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MRS SEHRISH AMMAR
(ANONYMITY DIRECTION NOT MADE)

Respondent

Representation:

For the Appellant: Mr M Diwncyz, Home Office Presenting Officer
For the Respondent: Mr T Hussain, Counsel instructed by Patel & Bhatia Solicitors

DECISION AND REASONS

1. This is the Secretary of State's appeal against the decision of Judge Ince made following a hearing at Bradford on 8th September 2014.

Background

2. The Appellant is a citizen of Pakistan. She applied to come to the UK as a spouse but was refused entry clearance on the grounds that the Entry Clearance Officer was not

satisfied that she was in a genuine and subsisting relationship or that she could meet the financial requirements of the Rules.

3. By the time the matter came before the Judge the only issue was the financial one. The Judge found that the Sponsor was working as claimed and that he had two sources of income. He was a counter assistant at BBQ Hut and a production operative at Stafford Personnel Limited. His combined income from both these sources was about £21,379 per year. He produced P60s for both jobs confirming the employment. He also produced wage slips from both employers and bank statements for the period from November 2012 to July 2013 plus an employment record schedule and a schedule of monthly earnings.
4. So far as the employment from BBQ Hut was concerned he was paid in cash which he used for day-to-day expenditure and support for himself and his wife.
5. The Judge said that the Sponsor was unable to comply with the strict requirements of the Rules but that they were

“unreasonable that they are so prescriptive as to expect and require a spouse to live his life in a certain way by always paying his cash earnings into his account. It makes sense that if his other earnings are paid direct into his account for him to keep his cash earnings as spending money for his day-to-day requirements. Accordingly as the Sponsor was paid in cash for his BBQ Hut earnings it was virtually impossible for him to satisfy the Rules. I reiterate that I consider it unreasonable for him to be required to alter his perfectly reasonable way of living when there are other ways of him demonstrating that he met the earnings requirements.”

6. On that basis he allowed the appeal under the Immigration Rules.
7. The Secretary of State appealed and permission was granted on 17th December 2014.

Findings and Conclusions

8. Paragraph 2 of Appendix FM provides that in terms of salaried employment in the UK all of the following evidence must be provided:
 - “(a) wage slips covering
 - (i) a period of six months prior to the date of application;
 - (c) personal bank statements corresponding to the same period as the payslips at paragraph 2(a), showing that the salary has been paid into an account in the name of the person or their partner jointly.”
9. When a Sponsor is paid in cash for the gross amount to be taken into account all of the monies received from the employment must be paid directly into the bank. This is a mandatory requirement. It is not for the Judge to decide whether the Rules are

reasonable or unreasonable. His task was to decide whether the decision of the Entry Clearance Officer was in accordance with the law and the Immigration Rules.

10. The Sponsor was not in a position to meet the requirements of the specified evidence provisions of the Rules and therefore, even if the Judge was satisfied that he did meet the maintenance level of £18,600 he was not entitled to allow the appeal.
11. The argument raised by Mr Hussain before the Judge in relation to JL (Domestic violence evidence and procedure) India [2006] UKAIT 58, but sensibly not pursued at this hearing, had no relevance in this case where the Rules make provision for specified evidence in Appendix FM.
12. The proper course is a reapplication where all of the specified evidence should be provided.

Decision

13. The original judge erred in law. His decision is set aside. The Secretary of State's appeal is allowed and the following decision is substituted. The Claimant's appeal is dismissed.

No anonymity direction is made.

Signed

Date

Upper Tribunal Judge Taylor