Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: OA/20699/2013
OA/20701/2013
OA/20712/2013

THE IMMIGRATION ACTS

Heard at Field House, London	**Determination Promulgated**
On 11 March 2015	**On 01 April 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE GRIMES

Between

FARAH MOHAMED AHMED
FARAH MAHAMOUD AHMED
SULEEKA OMAR FARAH

Appellants

and

ENTRY CLEARANCE OFFICER NAIROBI

Respondent

Representation:
For the Appellants: Ms E Heikkila, instructed by Asghar & Co Solicitors
For the Respondents: Mr D Clarke, Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellants, nationals of Somalia, appealed to the First-tier Tribunal against the decisions of an Entry Clearance Officer (ECO) of 17 October 2013 to refuse their applications for entry clearance as the partner (first appellant) and children (second and third appellants) of Ahmed Farah Sharif Osman, the sponsor. First-tier Tribunal Judge Devitte dismissed the appeals and the appellants now appeal with permission to this Tribunal.
2. The ECO refused the applications under Appendix FM of the Immigration Rules. The ECO decided that the following requirements had not been met;

- EC-P.1.1(c) – the sponsor had failed to give a written undertaking that he would be responsible for the appellants' maintenance and accommodation;
- EC-P.1.1(d) – the first appellant had not submitted any evidence to show that she is married to the sponsor as claimed or that they have been part of a family unit. The second and third appellants had not submitted any evidence to show that they are related as claimed to the sponsor;
- E-ECP.3.1, EC-C 1.1 and Appendix FM-SE – the appellants had failed to show that they met the income threshold requirement. The sponsor was required to show that he had an income of £24,800 per annum and the evidence provided did not show that and he did not provide the specified documents;
- In relation to the first appellant – she had not demonstrated that she met the English language requirement set out in E-ECP 4.1.

3. The First-tier Tribunal Judge heard oral evidence from the sponsor and also considered the documentary evidence before concluding that the appellants had not demonstrated that the financial requirements had been met. The Judge further found that the first appellant did not meet the English language requirement and that the sponsor had not given a coherent explanation of the difficulties he claimed had prevented her from taking the English language test in Ethiopia. The First-tier Tribunal Judge considered the appeal under Article 8 of the European Convention on Human Rights and accepted that the decisions interfere with the family life between the sponsor and the appellants however he found that the interference was proportionate to the public interest. Whilst not noted in the decision, Mr Clarke indicated that due to DNA evidence provided, the issue of the relationship between the sponsor and the appellants was conceded at the hearing.

Error of Law

4. It is contended in the grounds of appeal to the Upper Tribunal that the First-tier Tribunal Judge applied the wrong maintenance threshold in considering the maintenance requirement. The First-tier Tribunal Judge said that the sponsor had to show that he earned a minimum gross income of £22,400. It is contended that in fact the relevant threshold is £24,800 as set out in the refusal notices. I accept that the Judge made a factual error in misstating the relevant threshold.

5. It is further contended in the grounds of appeal that the Judge miscalculated the sponsor's gross annual income. At the date of the decision the sponsor was said to be employed in two jobs, working for Manpower Ltd and Clearway Care Ltd. The Judge accepted that the appellant produced payslips from both employers. However the appellant produced only two P60s, both from Manpower from the years ending 2013 and 2014 which reflected a gross annual income of £4871 and £10800 respectively. The Judge therefore found that the sponsor fell 'far short' of meeting the maintenance threshold [4].

6. It is contended in the grounds of appeal that the payslips from Manpower showed average gross weekly earnings of £360 which equates to £18,720 per annum and the payslips from Clearway show a gross weekly income of £180 which equates to £9,360 per annum. It is contended that this gives a total annual income of £28,080 which

exceeds the maintenance threshold. It is contended that the P60s only relate to Manpower and do not therefore reflect the sponsor's total income.

7. Mr Clarke accepted that the consideration given by the Judge to the financial requirements at paragraph 4 is not detailed. He also accepted that the Judge made a mistake in relation to the relevant threshold but submitted that this was not a material error. Mr Clarke submitted that the relevant period for calculation of the sponsor's income is 24 March 2013- 24 September 2013, being six months prior to the application. He submitted that there are only 4 payslips from that period from Manpower. He submitted that there is only one payslip from Clearway from that period. He further submitted that the sponsor has not provided the requisite six months' banks statements or letters from his employers as required by Appendix FM-SE. He submitted that the P60 for 2014 post dates the decision and cannot be considered and that the P60 for 2013 shows earnings of only £4871. He submitted that the Judge could not have reached any other conclusion on the evidence before him.

8. Ms Heikkila submitted that paragraph 4 is not detailed enough. She accepted that the documents provided to the Judge were not complete. However she submitted that it is possible to calculate the average earnings from the documents provided. She also accepted that the Judge would have had to piece the evidence together to calculate the annual income.

9. The appellants were represented at the hearing before the First-tier Tribunal Judge. They submitted a bundle of documents. I do not accept that it would have been appropriate for the Judge in these circumstances to piece the evidence together and work out the sponsor's average income based on incomplete documentary evidence. The appellants were required to demonstrate, by providing the evidence set out at Appendix FM-SE, that they met the income requirements at the date of the decision. They did not do so. They provided a few weekly payslips relating to the sponsor's employment which was insufficient evidence on which to base a finding that he earned the required amount over the relevant period. On the evidence before him the Judge could not have found that the appellants met the financial requirements. The Judge's error in relation to the threshold is not material as the appellants could not meet the correct threshold in any event.

10. Mr Clarke submitted that there is no evidence that the English language test cannot be taken in Ethiopia. The Judge concluded that the sponsor's oral evidence on this matter was not coherent. I am satisfied that there was insufficient evidence before the Judge to support a finding that the first appellant was exempt from the English language requirement. The Judge's findings on Article 8 were open to him in light of his findings in relation to the Immigration Rules and it was open to the Judge to take into account the appellants' failure to meet the Immigration Rules.

Conclusion:

The making of the decision of the First-tier Tribunal did not involve the making of an error on point of law. The decision of the First-tier Tribunal shall stand.

Signed Date: 30 March 2015

A Grimes
Deputy Judge of the Upper Tribunal