



IAC-AH-CJ-VI

**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: IA/33485/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 15th March 2016**

**Decision & Reasons Promulgated
On 5th April 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE M A HALL

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**MONSURAT ABIMBOLA OBADINA
(ANONYMITY ORDER NOT MADE)**

Respondent

Representation:

For the Appellant: Mr T Wilding, Senior Home Office Presenting Officer
For the Respondent: Mr O Adisa, Oasis Solicitors

DECISION AND REASONS

Introduction and Background

1. The Secretary of State appeals against a decision of Judge Buckwell of the First-tier Tribunal (the FtT) promulgated on 16th September 2015.

2. The Respondent before the Upper Tribunal was the Appellant before the FtT and I will refer to her as the Claimant.
3. The Claimant is a female citizen of Nigeria born 9th October 1974. On 17th October 2013 the Claimant applied for further leave to remain in the United Kingdom based upon her marriage to Anthony James Richards (the Sponsor) a British citizen. The marriage between the Claimant and Sponsor had taken place on 4th April 2013.
4. The application was refused on 8th August 2014.
5. In giving reasons for refusal the Secretary of State explained that the Claimant needed to demonstrate an annual income of £18,600, but the evidence submitted showed a gross annual income of £16,982. Although the Claimant had demonstrated possession of £4,012.61 in savings, because this amount was less than £16,000, the savings could not be taken into account. Therefore the application was refused on financial grounds.
6. The Secretary of State went on to consider section EX.1 and noted that the Claimant and the Sponsor did not have children. The Secretary of State concluded that there were no insurmountable obstacles to prevent the Claimant and Sponsor pursuing family life outside the United Kingdom. Therefore it was decided that the Claimant could not benefit from EX.1.
7. The Secretary of State considered the Claimant's private life under paragraph 276ADE(1) noting that the Claimant had only lived in the United Kingdom for seven years. It was not accepted that the Claimant could satisfy any of the provisions of paragraph 276ADE(1) and in particular it was not accepted that there would be very significant obstacles to the Claimant's integration back into Nigeria if she had to leave the United Kingdom.
8. The Secretary of State did not consider that there were any exceptional circumstances which would justify granting the application outside the Immigration Rules.
9. The Claimant appealed and the appeal was heard by the FtT on 25th August 2015.
10. The Secretary of State was not represented at the hearing before the FtT.
11. Having heard oral evidence from the Claimant, and considered documentary evidence, the FtT concluded that the Claimant had not presented evidence with her application that proved an income of at least £18,600 per year. However fresh evidence was produced to the FtT at the hearing showing that the Claimant had two jobs, and therefore had a combined income which exceeded £18,600.
12. The FtT decided that it was entitled to take the fresh evidence into account by virtue of section 85(4) of the Nationality, Immigration and Asylum Act 2002 (the 2002 Act). The FtT therefore allowed the appeal under the Immigration Rules noting that the Claimant's representative specifically confirmed that the Claimant did not pursue

her appeal pursuant to Article 8 of the 1950 European Convention on Human Rights (the 1950 Convention).

13. The Secretary of State applied for permission to appeal to the Upper Tribunal. It was contended that the FtT had erred by finding that the Claimant could succeed under the Immigration Rules, due to the production of post-decision evidence. It was contended that the rules limited the evidence to a six month period prior to the application, and therefore the requirements of Appendix FM-SE were not satisfied and the FtT was wrong in law to have allowed the appeal.
14. Permission to appeal was granted by Judge Nicholson of the FtT in the following terms;
 - “1. First-tier Tribunal Judge Buckwell allowed this Appellant’s appeal against refusal of leave to remain as a spouse and removal to Nigeria in a decision promulgated on 16th September 2015.
 2. The judge found that the Appellant met the financial requirements under Appendix FM-SE on the basis of post-decision evidence.
 3. The grounds contend that the judge erred in relying on post-decision evidence.
 4. Pursuant to paragraph 2 of Appendix FM-SE, the Appellant’s ability to meet the financial requirements of the rules was to be assessed by reference to pay slips and bank statements, which preceded the date of the application. In those circumstances, it is arguable that the judge erred in assessing the Appellant’s ability to meet the rules by reference to documents which post-dated the application.
 5. Permission to appeal is accordingly granted.”
15. Directions were issued that there should be an oral hearing before the Upper Tribunal to ascertain whether the FtT had erred in law such that the decision should be set aside.

Submissions

16. Mr Wilding relied upon the grounds contained within the application for permission to appeal. It was accepted that evidence could be submitted after an application had been lodged, but that the evidence relied upon, must relate to the six month period before the initial application was made.
17. I was asked to find that it was clear from the evidence submitted to the FtT, that the evidence did not relate to a period prior to the application being made, and therefore the requirements of Appendix FM-SE were not satisfied, and the FtT should have dismissed the appeal under the Immigration Rules.
18. Mr Wilding pointed out that the only issue before the FtT related to the financial aspect of Appendix FM, and therefore requested that the decision of the FtT be set aside, and a further decision made, dismissing the Claimant’s appeal.

19. Mr Adisa confirmed that no response had been made pursuant to rule 24 of the Tribunal Procedure (Upper Tribunal) Rules 2008 but explained that it was not accepted that the FtT had erred in law.
20. Mr Adisa relied upon section 85(4) of the Nationality, Immigration and Asylum Act 2002 submitting that unless an appeal related to an entry clearance case, or a points-based system application, a Tribunal could take into account evidence as at the date of the appeal hearing.

My Conclusions and Reasons

21. The FtT erred in law and did so materially. The FtT was wrong to allow the appeal under the Immigration Rules.
22. The Claimant's application was refused because E-LTRP.3.1, which requires a specified gross annual income of at least £18,600 could not be satisfied. That is not disputed by the Claimant.
23. It is common ground that the Claimant produced fresh evidence at the hearing before the FtT, which indicated that there was an annual income in excess of £18,600 but the evidence submitted to prove this, did not relate to the six month period prior to the application being made for leave to remain.
24. In an appeal of this nature, it is open to a Claimant to submit evidence up to the date of hearing, but that evidence must prove that the Immigration Rules are satisfied.
25. In this case it is paragraph 2 of Appendix FM-SE which is relevant. This provides that in respect of salaried employment in the UK, which was relied upon by the Claimant, pay slips covering a period of six months prior to the date of application must be submitted if, as in this case, the individual submitting the pay slips had been employed by the current employer for at least six months.
26. In addition bank statements must be submitted covering the same period of employment.
27. The Claimant submitted her application on 17th October 2013. Therefore the evidence of employment should have related to the six months prior to 17th October 2013, and the bank statements should have covered the same period.
28. The evidence did not cover that period, and therefore the evidence did not prove that the Immigration Rules were satisfied. The FtT erred in accepting that this fresh evidence, produced at the hearing, satisfied the Immigration Rules.
29. For that reason, the decision of the FtT is set aside. It was accepted by the parties that the only issue before the FtT related to the financial requirements, and I therefore re-make the decision by dismissing the Claimant's appeal.

Notice of Decision

The decision of the First-tier Tribunal contained a material error of law and was set aside.

I re-make the decision. The Claimant's appeal is dismissed.

Anonymity

No anonymity order was made by the FtT. There has been no application to the Upper Tribunal for anonymity and I make no anonymity order.

Signed

Date 15th March 2016

Deputy Upper Tribunal Judge M A Hall

**TO THE RESPONDENT
FEE AWARD**

The appeal dismissed. There is no fee award.

Signed

Date 15th March 2016

Deputy Upper Tribunal Judge M A Hall