



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: OA/12873/2014

THE IMMIGRATION ACTS

Heard at Phoenix House
On 17 March 2016

Decision & Reasons Promulgated
On 22 April 2016

Before

DEPUTY JUDGE OF THE UPPER TRIBUNAL CHANA

Between

MS LIU JUNTING
(NO ANONYMITY DIRECTION MADE)

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the appellant: Mr S Walker, senior presenting officer
For the respondent: no appearance

1. The appellant is the Secretary of State for the Home Department and the respondent is a national of China. I shall however for the sake of convenience, continue to refer to the Secretary of State as the respondent and Ms Juntong as the appellant which are the designations that they had before the First-tier Tribunal.
2. The respondent appeals to the Upper Tribunal against the determination of the First-tier Tribunal Judge Amin dated 1 December 2015 allowing the appellant's appeal pursuant to Appendix FM of the Immigration Rules.

3. Permission to appeal was granted by the First-Tier Judge Cruthers dated 2 February 2016 commenting that the evidence before the Judge as it stood may not have been sufficient to meet the requirement set out in appendix FM-SE and that the further bank statements produced at the hearing did not comply with the requirement set out in the Rules. It is also arguable that in an out of country appeal, non-compliance with the requirements of Appendix FM-SE cannot be remedied at the hearing.

First-tier Tribunal's findings

4. The First-tier Tribunal made the following findings which I summarise. The issue in this appeal is whether the appellant has met the financial requirements of the Immigration Rules. The respondent placed more emphasis on the Article 8 claim. The Judge agreed with the appellant's counsel that the appellant meets the financial requirements of the Immigration Rules because he considered the decision of **TR (ECO-post-decision evidence) Morocco [2005] UK IAT 0038**. The Entry Clearance Officer's decision was correct at the time it was made as the appellant accepted that he had not met the specified evidence requirements of the Rules as of that date. The appellant however provided evidence in the form of the appellant's sponsor's further bank statements produced at the hearing and this evidence shows what the circumstances were at the time of the decision and it cast light upon the position, as it then was.
5. Paragraph 27 the Judge stated "I am not satisfied in light of the bank statement produced at the hearing that the appellant sponsor has not provided the missing payslips for December-May 2014. These relate to his employment with Nail Technicians. This evidence shows that the appellant's income is over 31,000 per annum now but more importantly in 2015 as the evidence shows, the appellant's sponsors income was over £31,000 per annum now and more importantly in 2014, the date of the application the appellant's sponsors income was £20,877 per annum". The Judge also accepted the appellant's sponsor's evidence that he has been overpaid. The Judge found the sponsor to be a credible witness and said that she has no reason to doubt his evidence. In any event even if the overpayment is discounted, the appellant still meets the financial requirements of the Rules. The appellant did not rely on his income from Saigon Restaurant Ltd. For all the reasons the Judge found that the appellant has met the financial requirements of The Immigration Rules and her appeal succeeds.

The grounds of appeal

6. The grounds of appeal state the following which I summarise. The Judge has made a material error of law in the decision. The decision maker references to the fact that the letter from the sponsors employer, Special Nails, did not meet the requirements of the specified guidance set out in Appendix FM SE of the Immigration Rules. At no point within the decision has the Judge made any reference to having seen, or considered, a

letter from the sponsors employer, and that it met the requirements of the Rules as set out in the Immigration Rules. The Judge made an error of law by accepting the appellant has met the financial requirements when she had not produced all of the specified evidence.

7. The next ground of appeal is that that the Judge accepted the appellant's further bank statements provided at the hearing. The Judge states that they help to demonstrate the appellant's income meets the requirements of the Immigration Rules. Within the Immigration Rules it is stated that the appellant must produce personal bank statements on official bank stationery, or be accompanied by a letter from the bank on headed paper if they are electronic personal bank statements. The Judge has made an error of law by accepting copies of bank statements as evidence supporting the appellant's income when the requirements are that original documents must be produced.

The hearing

8. The appellant or her representative did not attend the hearing. On the morning of the hearing, I asked the Usher to call the representatives and was informed by the Usher that I should determine the appeal on the papers.

Decision on the error of law

9. The only issue in the appeal therefore is whether the First-Tier Tribunal Judge materially erred when he found that the appellant had satisfied the requirements of s7 of Appendix FM- SE for entry clearance to the United Kingdom as the spouse of a person present and settled in this country.
10. The Judge made a material error of law in accepting the evidence of copies of the bank statements at the hearing and finding that the appellant meets the requirements of Appendix FM-SE of the Immigration Rules. Appendix FM is a technical area of the law and all the requirements must be met including a providing original bank statements and a letter from the employer. The appellant did not provide the same and could not therefore have possibly satisfied the requirements of the Immigration Rules.
11. I find that a material error of law has not been established in the determination. In the circumstances the respondent's appeal must succeed. I remake the decision and find the appellant has not met the requirements of the Immigration Rules to be granted leave to remain in the United Kingdom as she has not provided the specified documents required and dismiss her appeal.

DECISION

The Secretary of State's appeal is allowed

I dismiss the appellant's appeal

Anonymity direction not made

I make no fee order

Dated this 19th day of April 2016

Signed by

A Deputy Judge of the Upper Tribunal

Ms S Chana