



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/09076/2015

THE IMMIGRATION ACTS

Heard at Birmingham Employment Centre
On 13th July 2017

Decision & Reasons Promulgated
On 8th August 2017

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

ALFIYA BEDARAHMAD MALIK
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Adam Pipe (Counsel)
For the Respondent: Mr David Mills (Senior HOPO)

DECISION AND REASONS

1. The Appellant is a female, a citizen of India, who was born on 24th February 1994. She applied for entry clearance to join her husband, Kasim Sheikh, under the partner route in Appendix FM of the Immigration Rules. The Respondent refused that application on 28th September 2015 on the basis that the Sponsor did not have the gross annual income of at least £18,600.

The Hearing

2. At the hearing the judge had the evidence submitted by the Appellant of the Sponsor's pay slips, a P60, bank statements, and a letter from Connect Distribution, where the Sponsor worked.

3. The judge during the course of the hearing stated that, "At the end of the hearing I gave a preliminary view that in view of the fact the Respondent was conceding that the Sponsor met the Minimum Income Requirement, I hoped that I might be in a position to look favourably on the Appellant's claim" (paragraph 3). However, the judge went on, to then conclude that this was a "near miss" case whereby the Appellant could not succeed.
4. In so concluding, the judge recognised that the Sponsor's combined total gross income was £19,695 (see paragraph 7). However, there was a single bank statement missing which did not comply with the Sponsor's P60 for the year ended April 2015. The judge went on to refer duly to Appendix FM-SE and, what is referred to as the "evidential flexibility" Rule, and noted the submissions made by Mr Manzoor Hussain, appearing on behalf of the Respondent Secretary of State, that it was open to the Respondent to have requested the missing bank statement from the Appellant because the bank statement existed at the time of the application and could be considered (see paragraph 8).

Submissions

5. Appearing before me on 13th July 2017, Mr Mills, appearing on behalf of the Respondent, stated that the minutes of notes made by Mr Manzoor Hussain on the day of the hearing, clearly shows that he was conceding that the Appellant did comply with the requirement of the Rules and that the minimum threshold income of £18,600 could be verified. The only barrier was the missing bank statement. It was open to the judge to resolve this by exercising the jurisdiction under the "evidential flexibility" Rules, which the judge had expressly set out at page 4 of the determination, where he refers to the "sequence of documents" that may be missing, in which the reference to a "bank statement from a series" is clearly mentioned (at paragraph 8). Mr Mills submitted that the appropriate course of action now was to make a finding of an error of law and to allow the appeal outright.
6. I have accepted the concessions made both by Mr Manzoor Hussain at the hearing before Judge A.M.S. Green, and more relevantly, the concession made by Mr Mills before this Tribunal.
7. I find that the judge materially erred in law as contended in the grounds seeking permission to appeal. The "evidential flexibility" jurisdiction exists precisely for this kind of case and ought to have been exercised, particularly as the concession was made by Mr Manzoor Hussain at the time of the hearing.
8. I remake the decision on the basis of the findings of the original judge, and the evidence before him, and the submissions that I have heard today. I have decided to allow this appeal.

Notice of Decision

The decision of the First-tier Tribunal involved the making of an error of law such that it falls to be set aside. I set aside the decision of the original judge. I remake the decision as follows. This appeal is allowed.

No anonymity direction is made.

Signed

Date

Deputy Upper Tribunal Judge Juss

4th August 2017

TO THE RESPONDENT
FEE AWARD

As I have allowed the appeal and because a fee has been paid or is payable, I have made a fee award of any fee which has been paid or may be payable.

Signed

Date

Deputy Upper Tribunal Judge Juss

4th August 2017