



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/05810/2015

THE IMMIGRATION ACTS

Heard at Field House
On 15 December 2017

Decision & Reasons Promulgated

On 24 January 2018

Before

**DR H H STOREY
JUDGE OF THE UPPER TRIBUNAL**

Between

**MRS ASIA AKTHER ULLAH
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M Hossain, Counsel instructed by Chancery Solicitors
For the Respondent: Mr L Tarlow, Home Office Presenting Officer

DECISION AND REASONS

1. This appeal is brought by the appellant, a citizen of Bangladesh, against the decision of First-tier Tribunal (FtT) Judge Reid sent on 14 February 2017 dismissing her appeal against the decision made by the respondent refusing her entry clearance as a partner under Appendix FM of the Immigration Rules. The ECO's refusal decision, having noted that the Rules required the appellant, in order to meet the formal requirements

to show a gross income of at least £18,600, stated that although she had submitted documents stating that the sponsor earned £18,900 as a chef with SR Restaurant Ltd, the TSB Bank statements in the sponsor's name "do not reflect the amount shown in your sponsor's payslips. You have not provided any satisfactory explanation for these discrepancies and I am not satisfied your sponsor's employment and earnings are as stated". In the Entry Clearance Manager Review confirming the ECO's decision, the comment was added: "Whilst not obligatory, it could have been possible to provide a letter of confirmation of earnings from HMRC but this was not provided".

2. The judge noted that the evidence before him now included a new letter dated 26 January 2017 from HMRC confirming that the appellant's gross salary was £18,900 and a 2015-2016 P60 which had not been before the ECO. The judge also noted that he had before him a letter from the sponsor's employer stating that the sponsor was taking salary advances weekly which reconciled to his monthly wages; that his salary was credited weekly but in some weeks his salary would not be credited four times (it could be three or five) and that the employer would if need be adjust the salary at the end of the month by paying him cash. The judge also recorded the respondent's submission as being that "[t]he amount being paid weekly into the TSB account was around £304 (net) which was broadly consistent with the gross annual salary claimed" (para 6).
3. Having identified that the payslips and bank statements submitted by the appellant covered the requisite six month period counting back from the date of application in June 2015, (May 2015 – December 2014) the judge stated at para 17:

"17. I find that the sponsor was paid at intervals during the month usually around weekly but that his payslips were issued monthly (letter dated 14th May 2015 from the sponsor's employer, SR Restaurant Ltd trading as Paper Duck). Payments consistent with a usually around weekly practice were made in the period from December 2014 to May 2015 into the sponsor's TSB account, designated wages."

4. The judge then listed the payslips and the corresponding TSB receipts for dates on 31 December 2014, 2 February 2015, 28 February 2015, 3 March, 30 April, 31 May 2015. Having noted that the payslips net pay was £7,927.32 and the total TSB receipts £7,550, the judge said the amount did not match. The judge then concluded:

"20. I have also however assessed this in the round over the 6 month period to take account of any payments made for example at the end of a month but relating to a week at the beginning of the next month or vice versa. The amounts actually received over 6 months also did not match up with the total net pay on the payslips for those 6 months. I have not been provided with an explanation for this shortfall.

21. The decision was therefore correct that the payments made into the TSB account in the 6 months prior to the application did not match the payslips provided.

22. Notwithstanding this, the letter dated 26th January 2017 from HMRC records the sponsor's gross salary in the tax year 2014-2015 as £7,875 (5 months), equating to gross £18,900 pa, consistent with the 2014-2015 P60. For 2015-2016 it is recorded as £18,900 gross pa, consistent with the 2016-2016 P60. Throughout the 6 month period on the payslips the monthly gross salary is £1,575 equating to £18,900 pa gross which is the salary stated in the contract of employment (page A16-17). I therefore find that the salary declared to HMRC and on which tax was paid was at the time of the decision (looking back at the previous 6 months) £18,900 gross pa.
 23. However, it remains the case that the net amounts payable under the payslips were not on the evidence before me in fact paid to the sponsor. The Appellant did not therefore satisfy the evidence requirements in para 2(c) of Appendix FM-SE that the salary stated in the payslips has been paid into the sponsor's account. No explanation for this particular discrepancy has been provided in the witness statements of the Appellant or the sponsor. The letter from the employer dated 14th May 2015 (said by the Appellant and the sponsor to resolve any confusion) only explains the weekly payments in advance and a reconciliation at the end of the month; it does not explain why either looking at it monthly or looking at it overall over a 6 month period the total amount payable under the payslips was not in practice paid to the sponsor."
5. Paragraph 23 evinces a number of difficulties. First of all, there was no longer any issue in this case that the sponsor's salary was £18,900. Paragraph 22 acknowledges this but then fails to consider its relevance to the issue under paragraph 2(c) of Appendix FM-SE when considering whether there was a satisfactory explanation for the discrepancies, notwithstanding that they were clearly minor. Secondly, the respondent had accepted in submissions that "[t]he amount being paid weekly into the TSB account was around £304 (net) which was broadly consistent with the gross annual salary claimed". This too should have been considered relevant to the issue of explanation. Thirdly, the judge appears to have required a perfect arithmetical match between payslips and bank receipts, whereas the relevant Rule only speaks of "correspondence".
 6. Indeed the relevant Rule only requires "[p]ersonal bank statements corresponding to the same period(s) as the payslips" ...; the correspondence is between periods of time, not solely in amount. Even though in the appellant's case there was the complicating factor that he was paid weekly, not monthly, there was sufficient consistency to constitute correspondence. To the extent there was a discrepancy it was not, as the judge described, a "shortfall", but a slight excess (of payslip amounts over bank receipts). In requiring an explanation as to why the two sets of figures did not perfectly match, the judge applied paragraph 2(c) far more restrictively than was justified. Had it not been for the judge's mistaken application of paragraph 2(c) it is clear that the judge would have allowed the appeal on Article 8 grounds, there being no public interest in denying entry clearance to a person who in fact met the requirements of the Rules.

7. Even if I had found that the judge's application of paragraph 2(c) was open to him, I would have expected considerably more from the judge when reasoning why the decision was not contrary to Article 8 consideration outside the Rules, particularly bearing in mind that the respondent at the hearing expressed satisfaction that the amount being paid weekly into the TSB account was "broadly consistent with the gross annual salary claimed".
8. For the above reasons I conclude that the judge materially erred in law and that his decision is to be set aside.
9. In this case the decision I re-make can be stated quite shortly. On the available evidence there was sufficient correspondence between the payslips and the bank statements over the relevant periods. Accordingly, the appellant met the requirements of the Immigration Rules. There is not a public interest in refusing to grant her entry clearance, as it was only the issue of the financial requirements that had been in dispute. Accordingly, it would be disproportionate and contrary to Article 8 to refuse entry clearance.
10. I would add the following observation. At the hearing the judge was informed that the sponsor now had a new employer, Once Upon a Thai, which he said he started on 22 October 2016. Although the appellant was not required for the purposes of the appeal against the decision of the ECO dated 20 August 2015 to evidence the gross salary (stated to be £19,000 per annum) or to produce payslips and bank statements that corresponded for a specified period, the evidence he did produce was considered by the judge to be insufficient. The appellant may wish to assist the ECO, in deciding what steps to take in light of my decision, to produce further payslips and bank statements, together with any available HMRC evidence in support. Such action may facilitate a grant of entry clearance being made sooner rather than later.

Notice of Decision

The decision of the FtT judge is set aside for material error of law.

The decision I re-make is to allow the appellant's appeal.

No anonymity direction is made.

Signed:

Date: 21 January 2018



Dr H H Storey
Judge of the Upper Tribunal