



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/18548/2016

THE IMMIGRATION ACTS

Heard at Bradford
On 16th January 2018

Decision & Reasons Promulgated
On 7th February 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE D E TAYLOR

Between

MR DAVID WEEKES
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Annetta Sharon Squires-Weekes
For the Respondent: Mrs R Pettersen, Home Office Presenting Officer

DECISION AND REASONS

1. This is the appellant's appeal against the decision of Judge Fox made following a hearing at Bradford on 27th September 2017.

Background

2. The appellant is a citizen of Barbados born on 19th February 1971. He applied to come to the UK as a spouse but was refused entry clearance on 27th June 2016 on the grounds that the Entry Clearance Officer was not satisfied that the appellant was in a genuine relationship with his sponsor nor that the financial requirements of the Immigration Rules had been met.
3. The judge found that the appellant had married the sponsor on 16th March 2016, and if he was granted entry clearance he would reside with her in the UK. He accepted that the couple were in a genuine and subsisting relationship.
4. He was not satisfied that the requirements of Appendix FM-SE had been met.
5. He wrote as follows:-

“It is agreed between the parties that the appellant and the sponsor have not submitted the specified evidence in relation to the financial requirements. The sponsor accepted that she did not submit her payslips for the six month period prior to the date of the application. The sponsor and the appellant have also accepted (both in the Grounds of Appeal and orally at the hearing) that the letters from the employers do not contain all of the information that is required as stated in Appendix FM-SE and outlined in the refusal decision. I note that the appellant submits that further letters will be submitted however the sponsor confirmed that she does not have any other letters to submit. She further stated that her employers told her that they would include all of the relevant information in the letters that are dated 2nd and 19th October 2015. I therefore find that the financial requirements have not been satisfied in this matter as the specified evidence has not been submitted.

I find that there is too much specified evidence missing in this matter and that the respondent was correct not to apply the discretionary power stated in paragraph D of Appendix FM-SE (to not apply the requirements for the documents).”

6. On that basis he dismissed the appeal.
7. The appellant sought permission to appeal on the grounds that crucial documents were missing from the judge’s file. They had been submitted via email on 26th July 2016 but not linked to the file at the Tribunal hearing. The documents included updated job letters from Taskmaster and the NHS, Barclays and NatWest Bank statements showing the payment of wages from Taskmaster and NHS respectively, Taskmaster payslips for the period 4th October 2015 to 3rd April 2016, P60 from Taskmaster for 2016, NHS payslips for the period 2015 to April 2016 and other documents.
8. Permission to appeal was granted by Judge Murray on 26th October 2017.
9. On 15th November 2017 the respondent served a reply defending the determination and submitting that the sponsor acknowledged that the employment letters did not include the specified evidence required.

The Hearing

10. At the hearing Mrs Pettersen accepted that the documents referred to in the reply in fact referred to documents relating to the appellant's relationship with his spouse. She acknowledged that the material which was in the documents which had not been linked to the file were in fact relevant to the consideration of whether the Entry Clearance Officer ought to have applied paragraph D of Appendix FM-SE.
11. The decision is set aside on the grounds that the judge did not reach it on the basis of all of the evidence which ought to have been before him. Relevant information which should have been on his file was missing.

Findings and Conclusions

12. Paragraph D of Appendix FM-SE states:-
 - “(a) In deciding an application in relation to which this Appendix states that specified documents must be provided, the Entry Clearance Officer or Secretary of State will consider documents that have been submitted with the application, and will only consider documents submitted after the application where sub-paragraph (b) or (e) applies.
 - (b) If the applicant:
 - (i) Has submitted:
 - (aa) A sequence of documents and some of the documents in the sequence have been omitted (e.g. if one bank statement from a series of bank statements is missing);
 - (bb) A document is in the wrong format (for example, if a letter is not on letter headed paper as specified); or
 - (cc) A document that is a copy and not an original document; or
 - (dd) A document which does not consider all of the specified information; or
 - (ii) Has not submitted a specified document, the decision-maker may contact the applicant or his representative in writing or otherwise and request the documents or the correct versions. The material requested must be received at the address specified in the request within a reasonable timescale specified in the request.
 - (c) The decision-maker will not request documents where he or she does not anticipate that addressing the error or omission referred to in sub-paragraph (b) will lead to a grant because the application will be refused for other reasons.”
13. Mrs Pettersen acknowledged that the deficiencies in the documents before the Entry Clearance Officer fell within the above paragraph. The letter from the employer was not in the correct format and some of the payslips were missing. However she accepted that the appellant had submitted the other documents, including P60s for

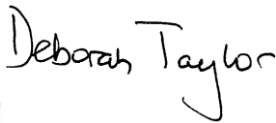
the relevant years, which would have informed the Entry Clearance Officer that the appellant could potentially meet the requirements of the Rules. The sponsor has not changed her employment for many years. It is clear from the P60s that she earns well in excess of the £18,600 required.

14. She also accepted that, in July 2016, the appellant produced the missing payslips and the employer's letter setting out the required information and a more up-to-date P60 covering the date of decision, which fell within a new tax year. In the circumstances she agreed that the Entry Clearance Officer would reconsider the application taking into account the documentation produced with the Grounds of Appeal which could have been requested under paragraph D.
15. The decision as to whether entry clearance ought to be granted remains of course with the Entry Clearance Officer. The appeal is therefore allowed to the extent that it is remitted back for a decision to be made.

Notice of Decision

The appeal is allowed.

No anonymity direction is made.



Signed

Date 5 February 2018

Deputy Upper Tribunal Judge Taylor