



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: OA/00902/2013

THE IMMIGRATION ACTS

Heard at Field House
On 16th May 2014

Determination Promulgated
On 25th June 2014

Before

Upper Tribunal Judge Chalkley

Between

ENTRY CLEARANCE OFFICER - ISLAMABAD

and

MRS AYESHA SARWAR

Appellant

Respondent

Representation:

For the Appellant: Mr S Whitwell
For the Respondent: No Representative

DETERMINATION AND REASONS

1. The appellant in this appeal is the Entry Clearance Officer Islamabad to whom I shall refer as “the claimant”. The respondent is Ayesha Sarwar, a national of Pakistan who was born on 28th October 2005.

2. The respondent made application for entry clearance to enter the United Kingdom as a partner under paragraph EC-P.1.1 of Appendix FM of the Immigration Rules, but on 15th November 2012, in refusing the respondent's application, the claimant said this in the Notice of Refusal:

“Your sponsor is not exempt from the financial requirements as defined by paragraph E-ECP.3.3. I am not able to take into account any potential employment you have available to you in the UK or any offers of financial support from third parties. In order to meet the financial requirements of the Rules your sponsor's income from self-employment and other income in the last full financial year or as an average of the last two full financial years needs to be at least £18,600 per annum.

You have said in your Appendix 2 form that your sponsor is self-employed as AAT Web Works for eight months and their gross income before tax in the last full financial year was £29,032. In respect of self-employment in a limited company based in the UK all of the following must be provided:

- a) Evidence of registration with the registrar of companies at Companies House.
- b) Latest notice to file a company tax return – CT603 and company tax return – CT600 (both parts must be supplied).
- c) The organisation's latest audited annual accounts with: (i) the name of the accountant clearly shown; and (ii) the accountant must be a member of an accredited accounting body.
- d) Monthly corporate/business bank statements covering the same twelve month period as the tax return(s).
- e) Monthly personal bank statements covering the same twelve month period as the tax return(s) showing that the income from self-employment has been paid into an account in the name of the person or in the name of the person and their partner jointly.
- f) Evidence of ongoing self-employment through: (i) evidence of payment of class 2 national insurance contributions (for self-employed persons) or (ii) current appointment reports from Companies House (for directors).
- g) One of the following documents must also be provided:
 - (i) A certificate of VAT registration and the latest VAT return confirming the VAT registration number, if turnover is in excess of £73,000.
 - (ii) Proof of ownership or lease of business premises.
 - (iii) Original proof of registration with HMRC as an employer for the purposes of PAYE and national insurance, proof of PAYE reference number and account office reference number. This reference may be in the form of a certified copy of documentation issued by HMRC.
 - (iv) Proof of registration with the London Stock Exchange or with an international stock exchange approved by the Financial Services Authority in the UK.

These documents are specified in the Immigration Rules in Appendix FM-SE and must be provided. You have not submitted all of the required documentation to demonstrate your sponsor's income as claimed.

I therefore refuse your application under paragraph EC-P.1.1(d) of Appendix FM of the Immigration Rules.”

That notice of decision is dated 15th November 2012.

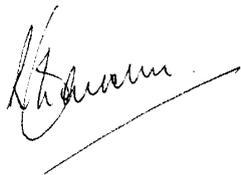
3. The respondent appealed to the First-tier Tribunal and her appeal was heard by First-tier Tribunal Judge Moore, sitting at Newport on 18th November last year. In his determination, promulgated on 26th November 2013, First Tier Tribunal Judge Moore purported to allow the respondent's appeal, to the extent that he purported to “remit it” to the claimant to consider all the evidence that had been provided by the respondent in relation to the sponsor and as is contained in the respondent's bundle, prefaced by the sponsor's witness statement, dated 8th November 2013.
4. The claimant challenged the judge's decision, pointing out that the application was refused by the claimant for want of specific evidence relating to the sponsor's financial circumstances in the twelve month period up to August 2012. They point out that the Tribunal noted at the hearing that some of the required documents were still not available, but that explanations had been provided for their absence.
5. The specified documents are set out in Appendix FM-SE and set out the mandatory requirements for the specific evidence required. The fact that the specific evidence was not made available, should the challenge suggest it, means that the judge should have dismissed the appeal.
6. At paragraph 21 Judge Moore said this:

“The [respondent] has listed in extensive detail in [her] witness statement the documentary evidence [she] provided in order to satisfy the evidence required. I cannot be wholly satisfied that the [respondent] when submitting the application had provided all the necessary documents relating to the sponsor and his financial position and relevant employment status. However, taking into account the AAT Web Works Private Ltd Report of Directors and unaudited financial statements which had not been provided to the [claimant] at the time of the application, together with the evidence given by the sponsor at this hearing it would be my intention to remit this matter back to the [claimant] to consider all the evidence.”
7. The judge went on to point out that because the company was dormant until 30th November 2011, the most recent accounting period ended on 30th November 2012. The respondent was unable to provide the sponsor's last audited annual accounts because the limited company appeared to be exempt from having its accounts audited. No VAT registration documents could be provided because the turnover was below the £73,000 limit.
8. At paragraph 25 the judge said this:

“The sponsor was unable to provide proof of registration with the London Stock Exchange since the company was not listed on the London Stock Exchange or any other international stock exchange.

In all the circumstances and due to the particular nature of the limited company and the mix between the sponsor’s business and personal bank accounts it might be the case that the financial requirements under the Rules could be satisfied and indeed may well be satisfied with further and closer inspection of all the bank statements both business and personal.”

9. The judge appeared to accept, therefore, that the documents required by Appendix FM-SE had not been submitted to the claimant by the respondent with the application. In those circumstances the judge had no alternative but to dismiss the respondent’s appeal.
10. It is often the case that judges purport to “remit back” decisions to the Secretary of State for the Home Department or Entry Clearance Officer. There is, however, no power for an Immigration Judge to remit back a case to the Secretary of State or to an Entry Clearance Officer. There is power however, where the Secretary of State’s decision or the decision of the Entry Clearance Officer is not in accordance with the law, and that is to allow an appeal to the extent that it is for the Secretary of State or the Entry Clearance Officer to consider the matter again in the light of findings of fact made by the judge.
11. For all these reasons I find that First-tier Tribunal Judge Moore did err in law in his determination which I set aside. My decision is that the respondent’s appeal against the decision of the claimant taken on 15th November 2012 to refuse the respondent’s application for entry clearance be dismissed.



Upper Tribunal Judge Chalkley