



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: OA/04085/2013

THE IMMIGRATION ACTS

Heard at Bradford
On 15th July 2014

Determination Promulgated
On 28th July 2014

Before

UPPER TRIBUNAL JUDGE D E TAYLOR

Between

MARIA ISSAN

Appellant

and

ENTRY CLEARANCE OFFICER

Respondent

Representation:

For the Appellant: The Sponsor
For the Respondent: Mr M Diwnycz, Home Office Presenting Officer

DETERMINATION AND REASONS

1. This is the Appellant's appeal against the decision of Judge Shimmin made following a hearing at Bradford on 3rd January 2014.

Background

2. The Appellant is a citizen of Pakistan born on 2nd August 1990. She applied to come to the UK to join her husband on 30th August 2013 but was refused on 12th December

2013 on the grounds that she could not meet the maintenance requirements of the Rules.

3. The Sponsor produced a P60 for the tax year to 5th April 2012 showing that from his employment with Zara Food Limited, which he started on 1st April 2011, he earned £12,740 for the full year. It was said that by the time he made his application his income had increased to £18,516 per annum. The judge recorded that the specific documentation required by the Immigration Rules had not been provided and there was no basis for challenging the conclusions in the Entry Clearance Officer's refusal of entry clearance since on the Appellant's own evidence he fell short of the required level of income set down in the Immigration Rules.
4. He also considered Article 8 and concluded that whilst family life existed, since the financial requirements of the Rules could not be met, the refusal of entry clearance was proportionate.
5. The Appellant appealed on the grounds that the Sponsor believed that the hearing was to take place on 10th January 2014 but it took place in his absence on 3rd January 2014. He enclosed a P60 which verified his annual income as £18,917 and he was therefore in a position to meet the requirements of the Immigration Rules. Permission was duly granted.

The Hearing

6. The Sponsor accepted that it had been his mistake so far as the date of the hearing was concerned and he had simply got it wrong. So far as his income was concerned he was very vague about what he had earned then but maintained that he was now in a position to meet the requirements of the Rules although he accepted that as at the date of decision his income was too low. He then said that there had been a genuine miscalculation of his income which was in fact £18,912 and well above the level required by the Rules. He provided a P60 for the year to 5th April 2013 in confirmation, and a number of payslips including the payslips for the six months leading up to the date of application.

Findings and Conclusions

7. This decision can only be set aside if it can be shown that the judge made a legal error in his decision. Two errors are argued here.
8. The first is that the judge proceeded in the absence of the Sponsor. However the Sponsor admitted that he had made a mistake, and certainly there is no evidence in the file that the hearing date was ever anything other than 3rd January 2014. The judge was plainly entitled to proceed in the Sponsor's absence.
9. Second, it is said that the Appellant can in fact meet the requirements of the Rules.
10. However the payslips which have been produced for the six months before the application was made, i.e. August 2012 do not show that he earned the requisite income at that time. Moreover it is entirely unclear whether these payslips were ever shown to the Entry Clearance Officer.

11. The only P60 which was before the Entry Clearance Officer was that relating to the tax year to 5th April 2012 when the Sponsor earned £12,740. It was entirely open to the judge to state that he regarded the claim that the Sponsor's wages had increased substantially, by a third, between April and August with some caution. But in any event, on the evidence before him, the level of £18,600 was not met.
12. The Sponsor now produces a P60 for the tax year to 5th April 2013 which purports to show that he earned £18,917 in that employment but that evidence was not before the judge. Neither were the payslips which he produced in court today.
13. If a re-application is made the Sponsor must check carefully what evidence is required and ensure that it is all produced with the application. Mention was made at the hearing that the couple have a child although no evidence has been produced and no reference to any children was made in the Grounds of Appeal before the judge. If there is a child of course the income requirements are increased to over £22,000 and it has never been the Sponsor's case that he earns that sum.
14. So far as Article 8 is concerned, again there is no error in the judge concluding that the refusal is proportionate bearing in mind that as at the date of decision the Sponsor and Appellant were not in a position to meet the financial requirements of the Rules.

Decision

15. The judge did not err in law and his decision stands.

Signed

Date

Upper Tribunal Judge Taylor