



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: OA/08413/2013

THE IMMIGRATION ACTS

Heard at Bradford
On 24th March 2014

Determination Promulgated
On 04th April 2014

Before

UPPER TRIBUNAL JUDGE D E TAYLOR

Between

ENTRY CLEARANCE OFFICER

Appellant

and

AMIR SHAHZAD

Respondent

Representation:

For the Appellant: Mr Diwnycz, Home Office Presenting Officer
For the Respondent: Mr Janjua of Janjua & Associates

DETERMINATION AND REASONS

1. This is the Secretary of State's appeal against the decision of Judge Hague made following a hearing at Bradford on 12th December 2013.

Background

2. The claimant is a citizen of Pakistan who applied for leave to enter the UK as a spouse. He was refused on 28th February 2013 on the grounds that the Entry Clearance Officer was not satisfied that he was in a subsisting relationship with his wife, and on the grounds that he had previously contrived in a significant way to frustrate the intentions of the Rules by being an illegal entrant, with reference to paragraph 320(11) of the Immigration Rules.
3. The judge heard oral evidence from the Sponsor whom he found to be entirely credible and he allowed the appeal in respect of both issues raised by the Entry Clearance Officer.
4. The judge wrote as follows:

“Mrs Burrows (the Presenting Officer) sought leave to raise maintenance as a new issue. She acknowledged that the Sponsor’s earnings from the two jobs were sufficient to satisfy the financial requirement at the time of the decision but pointed out that for the restaurant job the Sponsor had only produced payslips and had not shown the money being paid into her account as required.”
5. The judge stated that this was not an issue raised by the Entry Clearance Officer and “as it amounts to no more than objection on an evidential technicality only I declined to consider the argument.”
6. The Secretary of State sought permission to appeal on the grounds that the claimant could not succeed unless the mandatory requirements of Appendix FM-SE were met. The Rules of specified evidence are comprehensively set out in the Appendices setting out what types of evidence are required, the periods they cover and the format they should be in. The Tribunal had had no regard to this which is clearly more than a technicality.
7. Permission to appeal was granted by Designated Judge Manuell for the reasons stated in the grounds on 20th January 2014.

Submissions

8. Mr Diwnycz relied on his grounds and submitted that, in reliance on RM (Kwok-on-Tong: HC 395 para 320) India 2006 UKAIT 00039, the Presenting Officer was right to raise an issue when it became clear that the requirements of the Rules could not be met.
9. He produced the Presenting Officer’s note of the hearing which reads as follows:

“The IJ did not ask the parties whether there were any preliminary issues and it was an error on my part that I did not interrupt proceedings to introduce the issue of maintenance.

I only realised my error during oral evidence and pointed this issue out to the IJ and the rep. The IJ was initially happy to take evidence on this point but later became extremely annoyed when I pointed out that the requirements of Appendix FM-SE had not been met.

He then stated that he was not prepared to let me ambush proceedings in this way (I would have had some sympathy had he said this from the start) and in any case Appendix FM-SE had less weight than other parts of the Immigration Rules.

He said that as far as he was concerned the oral evidence showed that they could meet the £18,600 and it did not matter that they had not produced the documentary evidence and he would hear no more about the issue."

10. Mr Diwnycz submitted that since the specified evidence had not been produced the appeal could not succeed.
11. Mr Janjua initially submitted that the point had not been raised by the Presenting Officer until submissions. He said that all of the documentary evidence in relation to the Sponsor's second job was available and provided to the Entry Clearance Officer who had not raised any issue on it. The Sponsor earned £19,858, above the required level of £18,600, and so far as the Entry Clearance Officer was concerned, she had met the evidential requirements of the Rules which is why it had not been raised.
12. Mr Janjua then accepted that the evidential requirements had not been and could not be met since the money from the second job was not paid into the bank account, and although personal bank statements had been produced showing the salary from the first job, they could not show the salary from the second since she was paid in cash.

Findings and conclusions

13. Appendix FM sets out clearly the evidential requirements of the Rules. In respect of salaried employment in the UK all of the following evidence must be provided:
 - (i) The P60 for the relevant period or periods of employment relied on, if issued.
 - (ii) Wage slips covering..... any period of salaried employment in the period of twelve months prior to the date of application if the applicant has been employed by their current employer for less than six months.
 - (iii) A letter from the employer who issued the payslips.
 - (iv) A signed contract of employment for employment currently held.
 - (v) Monthly personal bank statements corresponding to the same period as the wage slips at paragraph (ii) showing that the salary has been paid into an account in the name of the person or in the name of the person and their partner jointly.

14. It was not open to the judge to decline to allow the Presenting Officer to raise the issue as to whether the Rules could be met. The correct approach would have been to allow the request, if necessary permitting Mr Janjua the opportunity of an adjournment in order to consider the issue.
15. Accordingly he was in error and the decision is set aside.
16. It seems that it is accepted by the Secretary of State's representative that the Sponsor does earn the money which she claims to earn, no issue having been taken with the authenticity of the payslips. That is above the level of income specified in the Rules. However it is unarguable that she did not meet the evidential requirements of the Rules and accordingly the appeal has to be dismissed.

Decision

17. The original judge erred in law and his decision is set aside. The following decision is substituted. The claimant's appeal against the decision of the Entry Clearance Officer is dismissed.

Signed

Date

Upper Tribunal Judge Taylor