



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: OA/09232/2013
OA/09234/2013

THE IMMIGRATION ACTS

Heard at Field House
On 12 March 2014

Determination Promulgated
On 12 March 2014

Before

UPPER TRIBUNAL JUDGE MOULDEN

Between

ENTRY CLEARANCE OFFICER - NEW DELHI

Appellant

and

MRS KAMALA KOIRALA
MR ANKIT ADHIKAR
(No Anonymity Direction Made)

Respondents

Representation:

For the Appellant: Mr G Saunders a Senior Home Office Presenting Officer
For the Respondent: Mr A Burrett of counsel instructed by Malik and Malik solicitors

DECISION AND DIRECTIONS

1. The appellant is the Entry Clearance Officer in New Delhi ("the ECO"). The respondents are citizens of Nepal born on 26 September 1983 and 12 March 2003 respectively. They are mother and son ("the claimants"). The ECO has been given permission to appeal the determination of First-Tier Tribunal Judge Kainth ("the FTTJ") who allowed the claimants' appeals against the ECO's decision of 11 March

2013 to refuse to grant them leave to enter the UK for settlement as the wife and son of their sponsor Mr Ramesh Prasad Adhikar ("the sponsor") under the provisions of Appendix FM of the Immigration Rules.

2. The ECO said that in order to meet the financial requirements of the Immigration Rules the sponsor needed a gross income of at least £22,400 per annum. After referring to the documentary evidence which the sponsor had submitted the ECO said that the claimant had not submitted the required documentation to demonstrate that he met the financial threshold. It was also said that the bank statements from NatWest bank did not adequately demonstrate his gross earnings.
3. The claimants appealed and the FTTJ heard their appeal on 10 January 2014. Both parties were represented and the sponsor gave evidence. The FTTJ found that the sponsor had established that he had an income in excess of the £22,400 threshold. The FTTJ allowed the appeals under the Immigration Rules and said that in the circumstances the provisions of paragraph 276ADE and other Article 8 human rights grounds had not been considered.
4. The ECO applied for and was granted permission to appeal arguing that the FTTJ erred in law by failing to give any consideration to the provisions of Appendix FM-SE of the Immigration Rules which set out what types of evidence were required, the periods to be covered and the necessary formats. Furthermore, there was a lack of clarity in the findings. There was no finding as to the sponsor's gross annual income at the date of the application.
5. Mr Saunders relied on the grounds of appeal. Mr Burrett indicated that he was in no position to argue that there was no error of law and would be making no submissions about this. He asked that if I found errors of law and set aside the decision then it should be remade in the First-Tier Tribunal.
6. I find that there are errors of law in the determination such that it should be set aside. It is sufficiently clear that the ECO refused the application because the claimants had not supplied the "required documentation". I find that the "required documentation" is the same as the "Specified Evidence" for family members set out in Appendix FM-SE to the Immigration Rules. It was not sufficient for the FTTJ to consider whether the evidence showed that the required financial threshold was achieved; that evidence had to meet the very detailed requirements of Appendix FM-SE. The FTTJ neither mentioned these requirements nor attempted to address them. Indeed, I note that in paragraph 7 of his witness statement dated 8 January 2014 which was before the FTTJ the sponsor accepted that; "I was unable to obtain all the specified documents to demonstrate that I met the financial requirements at the time of the application."
7. I also find that the FTTJ erred in law by failing to indicate either at all or in sufficient detail why the claimant had established the required gross annual income at the date of the application.

8. The determination is so deficient in proper consideration of the issues that there has been no proper hearing before the First-Tier Tribunal. In the circumstances I set aside the decision of the FTTJ and direct that it be re-made in the First-Tier Tribunal.

DIRECTIONS

- 1) A hearing date has been allocated. This is 23rd July 2014 at Hatton Cross.
- 2) The hearing is to be with all issues at large. No findings are preserved.
- 3) Time estimate two hours.
- 4) Nepalese speaking interpreter required.
- 5) Not before First-Tier Tribunal Judge Kainth.

Signed.....
Upper Tribunal Judge Moulden

Date: 12 March 2014