



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Numbers: OA/13391/2013

THE IMMIGRATION ACTS

Heard at: Field House  
On: 1<sup>st</sup> October 2014

Determination Promulgated  
On 2<sup>nd</sup> October 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE BRUCE

Between

ENTRY CLEARANCE OFFICER, ISLAMABAD

Appellant

and

SADIQA BIBI

Respondent

For the Appellant: Mr Tarlow, Senior Home Office Presenting Officer  
For the Respondent: Mr Ilahi, Counsel

DETERMINATION AND REASONS

1. The Respondent is a national of Pakistan date of birth 6<sup>th</sup> August 1983. On the 14<sup>th</sup> April 2014 the First-tier Tribunal (Judge Ghaffar) allowed her appeal against refusal to grant her entry clearance as the spouse of a person present and settled in the UK. The Entry Clearance Officer (ECO) now has permission to appeal against that decision.

2. The matter in issue was whether the Respondent had met the requirements of EC-P.3.1 of Appendix FM of the Immigration Rules. The Sponsor, a Mr Nauman Hussain, claimed to earn £17,000 per annum in his employment with 'Weathershield' and a further £2000 per annum from working at 'Crispy (UK) Ltd'. In support of that claim he had submitted payslips and a letter from Weathershield, and produced his bank statements showing his Weathershield salary to be paid into his account. In respect of Crispy he could produce payslips, a P60 and a letter from his employer, but was unable to show the salary being paid into his account since he was paid in cash. The Crispy salary could not therefore be taken into account because paragraph A1.2 of Appendix FM-SE requires income from employment to be evidenced by (a) wage slips, (b) a letter from the employer and (c) personal bank statements showing the salary being paid in: the latter he did not have.
3. On appeal to the First-tier Tribunal Judge Ghaffar found as fact that the Sponsor did in fact earn £2000 per annum from Crispy, which taken with his Weathershield employment, took him over the required threshold of £18,600 per annum. He accepted that his salary at Crispy was paid to the Sponsor in cash and did not therefore appear in his bank statements. Having made that finding he allowed the appeal outright.
4. The ECO obtained permission to appeal to the Upper Tribunal on the ground that it was not open to the Judge to allow the appeal under the Immigration Rules since the Respondent had plainly not met all of the requirements of the Rules, as outlined above. At a hearing on the 30<sup>th</sup> June 2014 Upper Tribunal Judge Dawson agreed with the ECO that the determination contained this error of law and set the decision of the First-tier Tribunal aside.
5. The matter has now come before me to be re-made. I have heard submissions from Mr Tarlow and Mr Ilahi for which I am grateful.
6. The point is a narrow one. As Mr Tarlow agreed the determination of the First-tier Tribunal contains undisturbed findings of fact that the income of this family will be in excess of £18,600. The Sponsor has demonstrated that he was earning £17000 plus £2000 at the date of decision; his difficulty is that he has not demonstrated it in accordance with Appendix FM-SE A1.2 (c).
7. Paragraph A (e) of Appendix FM-SE reads as follows:
  - (e) Where the decision-maker is satisfied that there is a valid reason why a specified document(s) cannot be supplied, e.g. because it is not issued in a particular country or has been permanently lost, he or she may exercise discretion not to apply the requirement for the document(s) or to request alternative or additional information or document(s) be submitted by the applicant.

8. The decision of the ECO dated the 9<sup>th</sup> January 2013 is entirely silent on whether this, or any other 'evidential flexibility' policy has been considered in the context of this appeal. The P60, wage slips and employer's letter in respect of Crispy all appear in the evidence before the ECO. It would seem that no consideration has been given to whether:
- a) the Sponsor was unable to produce said bank statements because his employer chose to pay him in cash;
  - b) whether that is a "valid reason" for not complying with the requirements of FM-SE A1.2 (c) (noting that the examples given in the rule itself, such a document being lost, are part of a non-exhaustive list and serve as *exempli gratia* rather than *id est*); and
  - c) whether he has demonstrated his earnings by means of alternative documents ie the P60 etc.
9. I therefore allow the appeal on the basis that the decision was not in accordance with the law because the ECO failed to consider the discretion built into the Rules. No doubt when the ECO comes to exercise his or her discretion consideration will be given to the findings of fact of the First-tier Tribunal that the family income does, as a matter of fact, exceed the required amount.

### **Decisions**

10. The determination of the First-tier Tribunal contains an error of law and it has been set aside.
11. I re-make the decision in the appeal by allowing it: the decision of the Entry Clearance Officer was not in accordance with the law.

Deputy Upper Tribunal Judge Bruce  
1<sup>st</sup> October 2014