



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: OA/15706/2013

THE IMMIGRATION ACTS

Heard at Manchester Piccadilly
On 26 September 2014

Determination Promulgated
On 2 October 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE BIRRELL

Between

JING WANG

(ANONYMITY DIRECTION NOT MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Patel of Lei Dat Baig Solicitors

For the Respondent: Mr A Mc Vitie Senior Home Office Presenting Officer

DETERMINATION AND REASONS

Introduction

1. I have considered whether any parties require the protection of an anonymity direction. No anonymity direction was made previously in respect of this

Appellant. Having considered all the circumstances and evidence I do not deem it necessary to make an anonymity direction.

2. The Secretary of State for the Home Department brings this appeal but in order to avoid confusion the parties are referred to as they were in the First-tier Tribunal. This is an appeal by the Secretary of State against a decision of First-tier Tribunal Judge Tiffen, promulgated on 1 May 2014 which allowed the Appellant's appeal against a refusal of entry clearance as a spouse under Appendix FM of the Immigration Rules.

Background

3. The Appellant was born on 5 February 1987 and is a citizen of China and is the wife of Zhao Haiyang who is a British citizen.
4. The Appellant applied for entry clearance as a spouse of Mr Haiyang.
5. On 1 July 2013 the Secretary of State refused the Appellant's application under Appendix FM of the Rules. The refusal was on the basis that there was a discrepancy between the payslips in respect of his employment and the deposits into the sponsors bank account from his employment and there was not explanation for the difference. Therefore the Respondent concluded that he could not be satisfied that the sponsor provided the specified documents or that he earned the money claimed.

The Judge's Decision

6. The Appellant appealed to the First-tier Tribunal and First-tier Tribunal Judge Tiffen (hereinafter called "the Judge") dealt with the application on the papers. The Judge found that there were five months where the payslips and the sum paid into the sponsors account from his employment did not match. The sponsor had provided a letter dated 20 July 2013 which the judge recognised post dated the date of decision but found he was entitled to consider its contents as it appertained to pre decision documentation. Having considered the contents of that letter he found that the reason for the difference in the figures was credible and therefore accepted that the Appellant had met the financial requirements of the Rules.

7. Grounds of appeal were lodged and on 13 June 2014 First-tier Tribunal Judge Holmes gave permission to appeal.
8. At the hearing I heard submissions from Mr Mc Vitie on behalf of the Respondent that :
 - (a) There was a discrepancy between the figure stated in the sponsor's payslip and the sums deposited into his bank account.
 - (b) Whichever figure was accepted the sponsor met the financial requirements of the Rules.
 - (c) The issue was whether it was open to the Judge to accept the explanation given by the sponsor's employer for the discrepancy.
9. On behalf of the Appellant Ms Patel relied on her skeleton argument.

Finding on Material Error

10. Having heard those submissions and considered the evidence before me I reached the conclusion that the Tribunal made no material errors of law.
11. The Appellant applied on 28 May 2013 for entry clearance as the spouse of Mr Haiyang the sponsor. The only issue in the case was whether the Appellant met the financial requirements of the Rules by reference to specified evidence set out in Appendix FM-SE paragraph 2:

“(c) Personal bank statements corresponding to the same period(s) as the wage slips at paragraph 2(a), 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.”
12. In the visa application the Appellant asserted that the sponsor earned £18999.96 in his employment with the Golden Park Chinese restaurant where he had worked as the General Manager since 1 October 2012. In support of the application the Appellant provided 6 months payslips, an employer's letter and bank statements for the period December 2012 to May 2013. There was also a P60 from HMRC providing independent documentary corroboration of the salary claimed.

13. The Appellant was, until April 2013, paid by cheque and thereafter the deposits into his account were by way of a direct transfer. It was not in dispute that there was a difference between the figures given in the Appellant's salary slips and the sums deposited in his account when he was paid by cheque as they were, in all cases, higher than the figure given in the payslip. The Judge had before him and made specific reference to a letter dated 20 July 2014 from Alice Huang the Company Manager of the Golden Park Chinese Restaurant. That letter provides a detailed explanation as to a mistake he made in typing that his monthly salary was £1588.33 when it was £1583.33 and that the cheques also included adjustments for an advance and reimbursement of a wine bill he had paid on behalf of the restaurant.

14. The letter is a matter of record and the Judge is not obliged to set out every aspect of the explanation given but I am satisfied that it was open to him to accept that explanation. I am satisfied that it was open to the Judge to find the explanation credible given that there is no requirement for the deposit to exactly match the payslip and that the Judge made clear he was taking into account all of the evidence and that included a P60.

15. I am therefore satisfied that the Judge's determination when read as a whole set out findings that were sustainable and sufficiently detailed and based on cogent reasoning.

CONCLUSION

16. I therefore found that no errors of law have been established and that the Judge's determination should stand.

DECISION

17. The appeal is dismissed.

Signed

Date 2.10.2014

Deputy Upper Tribunal Judge Birrell