



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: OA/16264/2013

THE IMMIGRATION ACTS

**Heard at Glasgow
on 24 September 2014**

**Determination
promulgated
On 25 September 2014**

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

ENTRY CLEARANCE OFFICER, Turkey

Appellant

and

SAKINE GUNDUZ

Respondent

For the Appellant: Mrs M O'Brien, Senior Home Office Presenting Officer
For the Respondent: Mr C McGinley, of Gray & Co, Solicitors

No anonymity order requested or made

DETERMINATION AND REASONS

1. The parties are as described above, but are referred to in the rest of this determination as they were in the First-tier Tribunal.

2. On 26 April 2013, the appellant sought entry clearance as a spouse. The ECO refused her application by notice dated 17 July 2013, on the view that the relationship was not genuine, and making no decision on the income requirements.
3. The appellant appealed to the First-tier Tribunal. A review by an Entry Clearance Manager maintains the refusal, and adds some adverse observations on the financial evidence. This includes the comment that the sponsor's salary is paid via BACS, but the receipts into his bank account do not show that they come directly from his employer (which is his own "one man" company).
4. In his determination promulgated on 1 May 2014 Judge Bradshaw records that the respondent conceded the genuine nature of the relationship. However, at the hearing the Presenting Officer raised further issues about the financial evidence, referring (for the first time in these proceedings) directly to the requirements of Appendix FM-SE of the Immigration Rules. The Presenting Officer and the judge thought that paragraph 9 was the relevant provision, although Mr McGinley thought that it was paragraph 2, because the appellant relied upon a salary paid to him not as a director but as an employee. The judge found some anomalies in the evidence (which certainly exist) but concluded at paragraph 44:

... as a question of fact [the sponsor] is indeed an employee of a limited company and ... the necessary documentation in respect of his gross annual salary has been produced ... as agreed at the outset ... this was the only issue ...

5. The ECO's grounds of appeal to the UT are that the FtT failed to have sufficient regard to the requirements for specified evidence set out in Appendix FM-SE. The one specific point made is that:

... it was unclear what the sponsor's actual income was, whilst there were payslips showing payment by BACS the sponsor's salary was being [paid] by standing order and the source of this was not specified ...

6. This case has been more obscure than it should have been, for a number of reasons. Mostly, but not entirely, these are on the side of the appellant and the sponsor. The sponsor set out to run a straightforward small business, but for no apparent reason chose to do so by a relatively complex structure of a company and an employment contract. The original application (not made by the appellant's current solicitors) did not directly address the relevant requirements of Appendix FM-SE. The refusal decision avoided the issue. The review went into it in part, but not by direct reference to the relevant provisions. The matter was further addressed at the First-tier Tribunal hearing, but, it would appear, still not as clearly as it might have been. As the First-tier Tribunal Judge found, there are unexplained anomalies in the evidence (such as the two signatories to the employment contract).

7. To add to the confusion, the original documents before the First-tier Tribunal had been returned to the appellant's representatives. However, Mr McGinley was able to demonstrate that the appellant's payslips correspond with payments leaving the business account and with payments arriving in his personal account.
8. Mrs O'Brien maintained that this did not meet the requirement to link the origin and destination of the payments, because the source of the payment is not named on the sponsor's bank statements. Against each credit, there appears only the words "standing order".
9. Without specialised knowledge or expert evidence, I cannot see any meaningful distinction between a "BACS" and a "standing order" payment. I do not think any other inference could reasonably be drawn but that the salary is paid by the company into an account in the name of the sponsor. On the one specific point raised in the grounds of appeal, I cannot see any failure to meet the requirements of the Rules. I therefore conclude that the grounds of appeal to the UT fail to disclose error of law in the First-tier Tribunal determination, and that the determination should stand.



25 September 2014
Judge of the Upper Tribunal