



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: OA/19543/2013

THE IMMIGRATION ACTS

Heard at Field House
On 7th August 2014

Determination Promulgated
On 7 August 2014

Before

UPPER TRIBUNAL JUDGE COKER

Between

ENTRY CLEARANCE OFFICER, Accra

Appellant

And

MAXWELL DARK PEPRAH

Respondent

Representation:

For the Appellant: Mr P Deller, Senior Home Office Presenting Officer
For the Respondent: Ms A Heller, counsel, instructed by J R Immigration Ltd

DETERMINATION AND REASONS

1. The claimant sought entry clearance as the spouse of a British Citizen, resident and settled in the UK. The application was refused in a decision that appears to have been taken on 2nd July 2013 but not notified to the claimant until 27th September 2013. The ECM review is, rather unhelpfully, dated prior to the taking of the decision, 21st February 2013. The claimant's appeal against the decision was allowed under the Immigration Rules by the First-tier Tribunal subsequent to a hearing in the First-tier Tribunal on 16th May 2014. The ECO was granted permission to appeal on the grounds that the First-tier Tribunal judge failed to have regard to the relevant evidence at the date of application (as oppose to the

date of decision); that the judge failed to have regard to the evidence which did not meet the requirements of the Rules as set out in Appendix FM-SE and that the sponsor's annual income was unclear and thus the appeal was not made out.

Error of law

2. The application had originally been refused on the basis that the claimant did not meet the financial requirements and was thus refused under paragraph EC-P1.1(d) of Appendix FM and that he had contrived in a significant way to frustrate the intentions of the Immigration Rules and thus the application should be refused under paragraph 320(11). The First-tier Tribunal judge, for cogent and sustainable reasons found that that the refusal did not meet the terms of paragraph 320(11) and did not uphold the refusal on that ground. That finding is not the subject of challenge in this appeal and therefore, with confirmation from Mr Deller, stands.
3. Before me it was agreed by both parties that the First-tier Tribunal judge had erred in law in his findings as to finance and I set aside the determination of the First-tier Tribunal accordingly.

Re-making the decision

4. Both representatives agreed that as at the relevant date the claimant did not meet the financial requirements as set out in the Immigration Rules and that on the basis of current jurisprudence the claim could not succeed on Article 8 grounds.
5. Accordingly I allow the appeal of the ECO, thus dismissing the claimant's appeal against the decision to refuse him entry clearance.
6. For the avoidance of doubt I reiterate that the claimant's successful appeal against the refusal under paragraph 320(11) stands.

Conclusions:

The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.

I set aside the decision and dismiss the claimant's appeal against the decision by the ECO.

Date 7th August 2014

Judge of the Upper Tribunal Coker