



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: IA/37020/2014

**THE IMMIGRATION ACTS**

Heard at Manchester Piccadilly  
On 30 April 2015

Decision and Reasons Promulgated  
On 12 May 2015

Before

**DEPUTY UPPER TRIBUNAL JUDGE BIRRELL**

Between

**SHAHIL YUNUSBHAI SULEMAN PATEL**  
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Ms Faryl for VAS UK

For the Respondent: Mr G Harrison Senior Home Office Presenting Officer

**DECISION 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 consider it necessary to make an anonymity direction.
2. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge A Devlin promulgated on 8 January 2015 which dismissed the Appellant's appeal

against a refusal of leave to remain as the spouse of a United Kingdom citizen on all grounds.

### Background

3. The Appellant was born on 11 June 1987 and is a national of India.
4. The Appellant first entered the United Kingdom as a Tier 4 student on 1 August 2009 with leave valid until 22 November 2010. He made an application to extend that leave which was granted until 15 March 2012. The Appellant then applied for a Tier 1 Post Study work visa which was granted on 28 February 2012 until 28 February 2014.
5. On 23 December 2013 the Appellant applied for leave to remain in the United Kingdom as the spouse of Shahin Akhtar Husan Bhai Shaikh ('the sponsor'). The Appellant was notified that his application fell to be refused because he did not meet the financial requirements of Appendix FM and the related evidential requirements under FM-SE. However the decision was put on hold pending the outcome of the case of MM.
6. On 3 September 2014 the Secretary of State refused the Appellant's application. The refusal letter gave a number of reasons:
  - (a) The Appellant's application was refused because he did not meet the income requirements of Appendix FM or the evidential requirements of FM-SE.
  - (b) The Appellant claims gross earnings of £24,174.28 from two sources Fashion Bazaar and United Forecourt. The bank statements do not reflect the claimed income and the deposits made do not meet the income threshold.
  - (c) There are no circumstances that warrant a grant of leave outside the Rules.

### The Judge's Decision

7. The Appellant appealed to the First-tier Tribunal. In essence the Appellant stated that although he may not have fulfilled the financial requirements at the date of application, he would be able to meet the requirement at the date of the appeal and therefore his appeal should be allowed.
8. First-tier Tribunal Judge Devlin ("the Judge") dismissed the appeal against the Respondent's decision. The Judge found :
  - (a) The Appellant did not meet the requirements of A1(2)(c) of Appendix FM-SE since he did not produce bank statements showing payments of salary corresponding to the payslips for the six month period prior to his application. He did not accept the submission that the evidential requirements permitted any other construction.
  - (b) In relation to Article 8 outside the Rules he considered the annual tax summary which showed a taxable income of £20,434.23 and the Appellant's submission that the underlying purpose of the financial requirements was met and therefore it was disproportionate to refuse the application for leave.

- (c) The judge considered the practical considerations underlying the evidential requirements. And found that they justified insistence that those requirements were met.
  - (d) He considered the submission that he should ignore the fact that the Appellant could make another application from outside the United Kingdom but found it was not disproportionate to expect him to do so.
9. Grounds of appeal were lodged which argued :
- (a) The Judge failed to take into account s 85(4) of the Nationality Immigration and Asylum Act 2002.
  - (b) The Judge failed to take into account the evidence in the tax document that showed that the Appellant met the financial requirements of the Rules.
  - (c) The Article 8 assessment was flawed failing to take into account that the Appellant was well established in the United Kingdom and his wife would be unable to relocate to India.
  - (d) The Judge failed to take into account s 117b of the Nationality Immigration and Asylum Act 2002.
10. On 20 February 2015 First-tier Tribunal Judge Osborne gave permission to appeal.
11. At the hearing I heard submissions from Ms Faryl on behalf of the Appellant that:
- (a) The Appellant had evidence in the form of bank statements to show that the threshold of £18,600 was met at the time of the decision.
  - (b) In the alternative of the Appellant could not meet the mandatory documentary requirements of Appendix FM-SE s 85(4) of the Nationality Immigration and Asylum Act 2002 takes precedence and the fact that he was bale to produce bank statements and payslips for the 6 months after the date of the decision should have been accepted to show that he met the requirements of the Rules for the 6 months before the date of decision.
  - (c) The Judge did not consider s 117 B of the Nationality Immigration and Asylum Act 2002.
12. On behalf of the Respondent Mr Harrison submitted that :
- (a) The Appellant did not produce the specified evidence and therefore it was open to the Judge to conclude that he did not meet the requirements of the Rules.
  - (b) It was nonsense to suggest that evidence for a six month period after the date of hearing could be used to meet the requirements for the six months prior to the decision.

### **Finding on Material Error**

13. Having heard those submissions I reached the conclusion that the Tribunal made no material errors of law.
14. This was an application for leave to remain as the spouse of a United Kingdom citizen in which the Appellant was unable to provide the evidence required by Appendix FM-SE in the form of salary slips and matching deposits into a bank account for the 6 month period prior to the date of decision because for most of that period payments were largely in cash and not deposited into the bank.
15. I am satisfied that the Judge was required to find in accordance with Paragraph A1 of FM-SE that the evidential requirements these are mandatory requirements: the Appellant was unable to produce 6 months of bank statements which reflected 6 months payslips as required in A2 of FM-SE (c) .
16. In relation to section 85(4) I do not accept that the interpretation advanced by Ms Faryl has any merit and would not have entitled any different decision to have been made. The fact is before the Judge it was accepted that the Appellant could not produce payslips and bank statements reflecting those payments for the 6 month period prior to the application .An in-country appellant does not succeed by showing that he meets the requirements of the Immigration Rules at the date of the hearing. He can succeed only by showing that the application that he made would be successful at the date of the hearing. A decision on a matter under the Immigration Rules is a decision on the detailed eligibility of an individual by reference to the particular requirements of the Rule in question in the context of the application that that person has made. It is thus not open to an appellant to argue simply that, on the date of the hearing, he meets the requirements of the Immigration Rules. He can succeed only if he shows that the decision that was made was one which was not in accordance with the Immigration Rules. Section 85(4) allows him to show that by reference to evidence of matters postdating the decision itself. In this case the Appellant did not produce the mandatorily required evidence before the Judge and he was entitled to conclude that they could not succeed.
17. The Judge I accept did not consider section 117B of the Nationality Immigration and Asylum Act 2002 when setting out what is a very detailed consideration of Article 8 at paragraphs 37-62. However I have considered what was said by the Tribunal in Dube (ss.117A-117D) [2015] UKUT 00090 (IAC) that is not an error of law to fail to refer to ss.117A-117D considerations if the judge has applied the test he or she was supposed to apply according to its terms; what matters is substance, not form.
18. I have therefore considered whether in determining the matter under Article 8 the Judge took into account all of the factors set out in s117 in determining the public interest. The Judge I am satisfied took all of the factors into account: the public interest in immigration control is taken into account in paragraph 52 (s117B1); The fact that the Appellant spoke English was part of the factual background of the case as he was a student (s117B 2); the Judge accepted the taxable income of £20,432.23 which was above the minimum income threshold at paragraph 38( s117 B3); the Judge took into account that the Appellant had come to the United Kingdom as a student with no expectation of remaining save in so far as he could meet the requirements of Appendix FM and FM-SE in paragraph 60(s 117B 4).

19. I am therefore satisfied that in determining whether the decision was proportionate the Judge took into account all of the relevant factors and the weight he gave to them was a matter for him. I am satisfied that the findings he made in relation to the personal circumstances of the Appellant and his sponsor at paragraphs 58- 61 were open to him on the evidence before him.

## **CONCLUSION**

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

## **DECISION**

21. **The appeal is dismissed.**
22. **No anonymity direction is made.**

Signed

Date 7.5.2015

Deputy Upper Tribunal Judge Birrell