



**First-tier Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: OA/21000/2013

THE IMMIGRATION ACTS

**Heard at Bradford
On 5th January 2015**

**Decision & Reasons Promulgated
On 12th January 2015**

Before

UPPER TRIBUNAL JUDGE ROBERTS

Between

ENTRY CLEARANCE OFFICER - ISLAMABAD

Appellant

and

**MR SYED RAZA SHAH
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: Mrs R Pettersen, Home Office Presenting Officer
For the Respondent: Mr A L Din

DECISION AND REASONS

1. The Entry Clearance Officer Islamabad appeals to the Upper Tribunal against the determination of the FtT (Judge Moore) which in a determination dated 7th August 2014 allowed Mr Syed Shah's appeal against the Entry Clearance Officer's decision of 8th November 2013 refusing him entry to the UK as the spouse of Sonia Qureshi.

2. For the sake of clarity I will refer throughout this determination to the Entry Clearance Officer as “the Respondent” and to Mr Shah as “the Appellant”, which reflects their position as they were before the FtT.
3. The Appellant applied for entry to the UK and his application fell to be decided under Appendix FM of the current Immigration Rules. The application was refused on two grounds. The first ground, which was that the parties were not in a subsisting relationship, was reviewed by the Entry Clearance Manager and that ground fell away. It was accepted that the relationship between the Appellant and the Sponsor is a genuine one.
4. The remaining ground of refusal is that the Entry Clearance Officer was not satisfied that the Appellant had submitted the specified documents required to show that he met the financial requirements of the Rules; in particular documents showing that his Sponsor earned a gross income of at least £18,600 per annum.
5. The matter came before Judge Moore, who in accordance with the Appellant’s request, dealt with the appeal on the documentary evidence before him. He noted that the Sponsor claimed to have income from two sets of employment; which together it was said enabled the Appellant to reach the income threshold of £18,600. The first employment in which the Sponsor is engaged was accepted by the Entry Clearance Officer as genuine. Evidence of that employment was produced showing that the sponsor worked at McDonald’s for 37 hours per week. Her annual income from that employment, which was verified by payslips, amounted to £14,248.
6. The Judge noted concerns raised by the Entry Clearance Officer regarding the second claimed employment. This was employment at the Jewel of India Restaurant in Otley. It was said that the Sponsor, in addition to her employment at McDonald’s, worked a further 28 hours per week at the Jewel of India Restaurant. Her average income from the Jewel of India employment it was said amounted to £266 per week which she was paid cash in hand. Although eight months’ payslips from Jewel of India were provided, and they showed payments in cash, no bank statements were produced showing a corresponding deposit for those wages.
7. Nevertheless the Judge went on to allow the appeal saying the following,

“The Respondent is correct in stating that the Santander current account for the Sponsor does not show salary paid into that account. However it would not, and could not, since the Sponsor was paid in cash. It cannot be correct that any Sponsor employee who is paid in cash can never in those circumstances satisfy the Rules.”
8. The Respondent sought and was granted permission to appeal to the Upper Tribunal.

The Upper Tribunal Hearing

9. Mrs Pettersen on behalf of the Entry Clearance Officer submitted that the FtT Judge had erred because he had ignored the provisions of the Rules which are comprehensively set out. She submitted that Appendix FM provides the terms for

salaried employees who are paid in cash. Those terms provide that the following evidence must be provided;

- (a) Wage slips covering
 - (i) A period of six months prior to the date of application...
- (c) Personal bank statements corresponding to the same period 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 their partner jointly.

She submitted that in the absence of that evidence the Judge fell into error in his approach. To date, nothing has been put forward to show bank statements corresponding to the same period as the wage slips showing cash salary paid to the Sponsor. Therefore the Judge's decision was unsustainable. She asked that I set aside the Judge's decision and substitute one dismissing Mr Shah's appeal.

10. Mr Din on behalf of the Appellant produced an up-to-date letter from the Jewel of India Restaurant confirming the Sponsor's employment there. He submitted that the Judge had found that the employment at the Jewel of India was genuine and the income earned by the Sponsor in her two employments exceeds the £18,600 threshold required by the Rules. The determination should stand.

Consideration

11. Whilst I accept that Mr Din tried valiantly to press the Appellant's appeal, what he was unable to do was to provide any evidence showing deposits in the Sponsor's personal bank statements which corresponded with her claim to receive cash from her employment at the Jewel of India Restaurant in Otley. It is clear therefore that there is a failure to comply with the Immigration Rules and that the Appellant's appeal must fail on that basis. I find that the FtT Judge erred in his findings that the Rule was satisfied. The Judge approach to the evidence was erroneous when he said at paragraph [15],

"It cannot be correct that any sponsor employee who is paid in cash can never in those circumstances satisfy the Rules".

The Rules in fact make provision for and recognise that Sponsor employees may be paid in cash. The Rules also provide that specified documentary evidence must be produced in those circumstances.

12. For the sake of completeness I also record that there were no Article 8 grounds raised before either the FtT or before me.

Decision

13. The decision of the FtT is set aside for legal error. I remake the decision. Mr Syed Raza Shah's appeal against the Entry Clearance Officer's refusal to grant him entry clearance is dismissed.

No anonymity direction is made.

Signed

Date

Judge C Roberts

Judge of the Upper Tribunal

TO THE RESPONDENT

FEE AWARD

I have dismissed the appeal and therefore there can be no fee award.

Signed

Date

Judge C Roberts

Judge of the Upper Tribunal