IAC-FH-NL-V1

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/23433/2014

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 12 January 2016	**On 26 January 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE MONSON

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MUHAMMAD RIZWAN ASIF
(ANONYMITY DIRECTION NOT MADE)

Respondent/Claimant

Representation:
For the Appellant: Ms E Savage, Specialist Appeals Team
For the Respondent: Mr E Waheed, Counsel instructed by Asons Solicitors

DECISION AND REASONS

1. The Secretary of State has obtained permission to appeal against the decision of the First-tier Tribunal (Judge Spicer) who in a decision promulgated on 21 July 2015 allowed the claimant's appeal against the decision made on 14 May 2014 to remove him and to refuse him leave to remain. The First-tier Tribunal did not make an anonymity direction, and I do not consider that the claimant requires anonymity for these proceedings in the Upper Tribunal.

2. On 23 October 2015 First-tier Tribunal Judge Ransley granted permission to appeal for the following reasons. It was arguable (Ground 1) that the

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judge might have erred in law by failing to apply the mandatory requirement of the Immigration Rules. The Judge had found that the claimant had not provided payslips for the relevant six months prior to the date of application as specified in Appendix FM-SE paragraph 2(a)(i) but the judge then went on to find that the missing November payslip was verifiable from subsequent payslips. It was also arguable (Ground 2) that the judge might have erred in law by failing to give reasons for accepting the claimant's postdecision English language certificate dated June 2014 as meeting the requirements of paragraph 27 and paragraph D of Appendix FM-SE of the Immigration Rules.

3. In respect of ground 1 the relevant finding of the judge is at paragraph [46] of his decision which I set out verbatim:

> "Ms Turnbull states in her skeleton argument that the Sponsor has provided the requisite payslips. However, on looking through the Appellant's bundle after the hearing, I could not find a payslip for November 2013 in the Appellant's bundle. I am prepared to accept that the November 2013 payslip may have been mislaid in the photocopying process. In any event, I find the information which would have appeared on the November payslip is verifiable from the subsequent payslips which show the cumulative balance of the Sponsor's pay, and the bank statement for November 2013 which also evidences a salary payment."

4. The judge then went on to say in paragraph [47] that taking all the evidence into account, and with the exception of the November 2013 payslip, the sponsor had supplied all of the specified information for the specified period, and the financial requirements were satisfied.

Discussion

5. On the face of it the judge's decision discloses an error of law as it is a mandatory requirement under paragraph 2 of Appendix FM-SE that payslips covering a period of six months prior to the date of application should be provided. However, the only issue taken in the refusal decision with respect to the financial requirement was that there were insufficient bank statements provided to corroborate the payslips submitted to confirm the earnings made by the sponsor.

6. Accordingly, on the basis of the position taken by the Secretary of State in the refusal letter the claimant prepared for the appeal hearing on the basis that there was no issue about whether he had complied with the requirement to provide a series of six months payslips in advance of the date of application.

7. It is clear that Ms Turnbull submitted that the sponsor had provided the requisite payslips, so she was unaware that a payslip was missing from the claimant's bundle.

8. Accordingly, I find that the error made by the judge was not material as it goes to a matter which was not an issue between the parties. There is also an important distinction between the omission of a payslip from the claimant's bundle and the omission of a payslip from the series of payslips that were provided with the application. The failure to provide a payslip in

the claimant's bundle was immaterial in circumstances where it was not alleged that the required series of payslips had not been provided with the application.

9. Accordingly, I find that the judge did not err in law in finding that the financial requirement was met, and in thus finding that the claimant could qualify for leave to remain on that ground.

10. I turn to ground 2 which is the issue of compliance with the English language requirement. I am satisfied that the SSHD correctly refused to accept the English language certificate that was provided with the application as it did not comply with Appendix O.

11. However, the judge found that a subsequent certificate from Trinity College, London dated June 2014 at page 87 of the claimant's bundle met the English language requirements of the Rules. The judge also noted the claimant was able to give evidence in fluent English at the oral hearing.

12. The case advanced by the Secretary of State on appeal is that the judge was precluded from taking into account a postdecision certificate. This submission is based on the wording of paragraph (d) of Appendix FM-SE. This provides that in deciding an application in relation to which this appendix states the specified documents must be provided, the Entry Clearance Officer or Secretary of State (the decision maker) will consider documents that had been submitted with the application, and will only consider documents submitted after the application where subparagraph (b) or (e) applies.

13. In my judgment the Secretary of State's reliance on paragraph (d) in this context is misconceived. Paragraph (d) sets out the parameters for consideration by the primary decision maker of documents which have not been provided with the application. It says nothing about the scope of the judge to consider documents or information provided by way of appeal. If this was a points-based system case, the judge would have been precluded from taking into account postdecision evidence subject to specific exceptions. But in this case the general rule applied, which was that the Tribunal could take into account postdecision evidence. Therefore I find that the judge did not err in law in taking into account the postdecision certificate in order to reach a finding that the claimant met the English language requirements.

<u>Notice of Decision</u>

14. Accordingly, for the reasons I have given above, I find that the decision of the First-tier Tribunal did not contain an error of law and the decision stands. This appeal by the Secretary of State to the Upper Tribunal is dismissed.

No anonymity direction is made.

Signed Date

Deputy Upper Tribunal Judge Monson