



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/33419/2014

THE IMMIGRATION ACTS

Heard at Field House
On 19 November 2015

Decision & Reasons Promulgated
On 2 February 2016

Before

Mr H J E LATTER
(Deputy Judge of the Upper Tribunal)

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

SALMAN UMAR
(ANONYMITY DIRECTION NOT MADE)

Respondent

Representation:

For the Appellant: Mr K Norton, Home Office Presenting Officer
For the Respondent: In Person

DECISION AND REASONS

1. This is an appeal by the Secretary of State against a decision of the First-tier Tribunal (Judge Widdup) issued on 27 July 2015 allowing an appeal by Mr Salman Umar against a decision made on 11 August 2014 refusing him further leave to remain as the husband of his sponsor, Katherine Brook. In this determination I will refer to the parties as they were before the First-tier Tribunal, Mr Umar as the appellant and the Secretary of State as the respondent.

Background

2. The background to this appeal is that the appellant is a citizen of Pakistan born on 15 March 1983. He arrived in the UK as a student on 3 September 2009 and was granted further leave to remain as a Tier 4 (General) Student until 29 November 2013. On 27 November 2013 he applied for further leave to remain on the basis of his marriage on 4 July 2013 to Mrs Brook.
3. He met the requirements for limited leave to remain save in respect of the requirement of showing that the family had a specified gross annual income of at least £18,600. In the decision letter dated 11 August 2014 the respondent set out why she was not satisfied that the appellant had produced the specified documents showing that the required income had been properly evidenced.
4. The respondent went on to consider the position under Appendix FM, EX.1. She accepted that there was a genuine and subsisting relationship between the appellant and his wife and, whilst it was acknowledged that she had lived in the UK all her life and was in employment, that did not mean that they would be unable to live together in Pakistan and, although relocating might cause a degree of hardship, the respondent was not satisfied that there would be insurmountable obstacles as defined in EX.2. Accordingly, the application was refused.

The Hearing before the First-tier Tribunal

5. The appellant appealed to the First-tier Tribunal and the appeal was heard on 16 July 2015. The appellant appeared in person and there was no representation on behalf of the respondent. The judge heard evidence from the appellant who provided a witness statement, a chronology and a bundle of documents. The judge accepted that Mrs Brook was in employment, was also self-employed and that her income from both sources for 2014 was £23,256. He noted that for the period ending 22 November 2013 Mrs Brook's business generated a net profit of £15,351 and that she was also working as a sales assistant earning £13,300. Her total earnings were therefore well in excess of £18,600. In the light of the evidence produced he found that the appellant met the requirements of Appendix FM and he allowed the appeal.

The Grounds of Appeal

6. In the grounds of appeal it is argued that in order to show that the required income of £18,600 is met, the documents set out in Appendix FM-SE must be produced. In respect of self-employment there must be evidence of the tax payable for the last full financial year as set out in Appendix FM-SE. The relevant last financial year for the appellant would be tax year 2012–2013 whereas the judge had relied on evidence relating to tax year 2013–2014.
7. In his submissions Mr Norton relied on the grounds and the provisions in paras 7 and 13(e) of Appendix FM-SE. It was clear, so he submitted, from the judge's

determination at paras 8, 10 and 14 that he had relied on income post-dating the relevant tax year and had accordingly erred in law.

8. Mr Umar and Mrs Brook explained that they had attempted to provide all the documents required by the respondent and made the point that at the date of the hearing they had been able to demonstrate a specified gross annual income of more than £18,600. Mr Umar confirmed that in his grounds of appeal to the First-tier Tribunal he had also challenged the decision that they could continue their family life in Pakistan. He argued that it would be completely unreasonable for the respondent to suggest that his wife could move to Pakistan.

The Error of Law

9. The application for further leave to remain was made on 27 November 2013 and the appellant had to meet the requirements of Appendix FM and to provide the evidence set out in Appendix FM-SE in support of his wife's income. The rules are clear that the evidence must relate to the last full financial year in respect of self-employment (para 7) and where, as in the present case, self-employment and employment is relied on, the evidence must also relate to the last full financial year (para 13(e)). The Upper Tribunal in Hameed (Appendix FM - financial year) [2014] UKUT 266 (IAC) confirmed that the financial year for the purposes of Appendix FM-SE was the tax year not the year selected for accounting purposes.
10. It follows that the judge was not entitled to take into account the evidence relating to earnings from employment and self-employment in the tax year 2013–2014. The application was made on 28 November 2013 and the evidence needed to relate to the tax year 2012–2013. In [8] the judge referred to the tax return for 2013–2014, in [10] to Mrs Brook's income from both sources for 2014 and to the net profit of the business for the period ending 22 November 2013 in [15]. In this respect the judge erred in law and his decision on whether the financial requirements of the rules were met must be set aside.
11. The appellant had also sought to challenge the respondent's decision under Appendix FM, EX.1 but, in the light of the judge's findings on the issue of finance, he did not proceed to consider that matter. As there have been no findings on that issue I am satisfied that the proper course is for it to be referred back to the First-tier Tribunal for consideration of whether the appellant and his wife are able to meet the requirements of EX.2 in showing that there are very significant difficulties in continuing their family life together outside the UK which could not be overcome or would entail very serious hardship for the appellant and his wife.

Decision

12. For the reasons I have given I am satisfied that the First-tier Tribunal erred in law and the decision is set aside. The appeal is remitted to the First-tier Tribunal for reconsideration of the appeal relating to Appendix FM, EX.1. There is no reason why the appeal should not continue in front of Judge Widdup and I so direct save only

that if this is not practicable or will lead to unreasonable delay, it would be appropriate for the appeal to be transferred to another First-tier Tribunal Judge.

Signed

Date: 17 December 2015

H J E Latter
Judge of the Upper Tribunal