



IAC-AH-DN-V1

**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: OA/09993/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 5 April 2016**

**Decision & Reasons Promulgated
On 14 April 2016**

Before

UPPER TRIBUNAL JUDGE WARR

Between

**LEPY AKTHER
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

ENTRY CLEARANCE OFFICER - DHAKA

Respondent

Representation:

For the Appellant: Mr Bhuiyan, sponsor
For the Respondent: Mr N Bramble, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Bangladesh born on 14 October 1979. She applied for an entry clearance to enable her to join her husband, the sponsor, whom she married in

Bangladesh on 7 April 2014. Her sponsor is a British citizen. She made the application on 8 April 2014. The application was refused on 3 August 2014.

2. The appellant initially came to this country on a visit visa in 2005 but left for Bangladesh on 13 March 2008.
3. In the refusal decision the Entry Clearance Officer took issues with the relationship between the parties and whether the marriage was valid. In addition points were taken on the financial aspects of the Rules. The Appellant appealed and her appeal came before a First-tier Judge on 2 October 2015. Having heard from the sponsor the judge resolved the credibility issues in favour of the parties and found that the relationship between them was genuine and subsisting and that they intended to live together permanently in the United Kingdom and further that the marriage was valid. There has been no cross-appeal from that aspect of the decision.
4. The judge dismissed the appeal because he was not satisfied that the Appellant had produced the specified evidence to comply with Appendix FM-SE. He reached his conclusions on this aspect for the following reasons:
 - “56. It was further said that the appellant and the sponsor had failed to supply the necessary financial information. The sponsor is required to show a gross annual income of £18,600 at least.
 57. The application was dismissed because wage slips covering a period of six months prior to the date of application had not been supplied it was said that the last wage slip was dated 28 February 2014 and was not within the last 28 days from the date of application which is stated by the entry clearance officer to be 16 April 2014.
 58. It was further said that a letter from the sponsor’s employer had not been submitted. Equally, bank statements for the same period had not been supplied.
 59. Appendix FM – SE sets out the financial requirements and how they must be proved.
 60. Appendix FM-SE A1(1) provides that:

‘Where this Appendix requires the applicant to provide specified evidence relating to a period which ends with the date of application, that evidence, or the most recently dated part of it, must be dated no earlier than 28 days before the date of application.’
 61. Appendix FM-SE Rule A1 2 deals with what documents must be provided in respect of salaried employment, this provides

‘In respect of salaried employment in the UK (except where paragraph 9 applies), all of the following evidence must be provided:

 - (a) *Payslips covering:*
 - (i) *a period of 6 months prior to the date of application if the person has been employed by their current employer for a least 6 months (and where paragraph 13(b) of this Appendix does not apply); or*

- (ii) *any period of salaried employment in the period of 12 months prior to the date of application if the person has been employed by their current employer for less than 6 months (or at least 6 months but the person does not rely on paragraph 7 13(a) of this Appendix), or in the financial year(s) relied upon by a self-employed person.*
 - (b) *A letter from the employer(s) who issued the payslips at paragraph 2(a) confirming:*
 - (i) *the person's employment and gross annual salary;*
 - (ii) *the length of their employment;*
 - (iii) *the period over which they have been or were paid the level of salary relied upon in the application; and*
 - (iv) *the type of employment (permanent, fixed-term contract or agency).*
 - (c) *Personal bank statements corresponding to the same period(s) as the payslips at paragraph 2(a), showing that the salary has been paid into an account in the name of the person or in the name of the person and their partner jointly'*
62. The sponsor was at pains to explain his financial position to the entry clearance officer and submitted the explanation that appears at page 378 together with the documents that follow that explanation.
63. Until 27 February 2014 the sponsor was employed by HM Revenue and Customs his last position being security officer. On 28 February 2014 he accepted employment with the Home Office as an intelligence assistant on a salary which he said was £22,515. His salary with HMRC was stated to be £18,595 which with allowances totalled £23,585 in all.
64. At the date of the application the sponsor had not been employed by his current employer, the Home Office, for at least six months. It would follow that he is able to supply payslips covering any period of salaried employment in the period of 12 months prior to the date of application under subparagraph 2(a)(ii) as set out above.
65. The payslips that he provided were issued by HMRC and were for the months of September, October, November and December 2013 and January and February 2014. I therefore find that he has complied with Rule 2(a)(ii).
66. The bank statements that he submitted cover the corresponding period and show his salary being paid into that account. See for example page 468. I therefore find that personal bank statements have been provided as required.
67. The sponsor also provided a letter from HMRC dated 12 November 2013 confirming his employment as a security guard. Attached to it is a copy of his terms of employment.
68. At page 384 it confirms his annual rate of pay is £18,595. Although it indicates that the appellant will receive additional payments and an annual attendance allowance it does not say what these are and how they are calculated. The letter does not, therefore, properly confirm the sponsor's gross salary. Nor does it confirm the period over which the sponsor has been paid no does it

confirm the level of salary relied upon in the application. On the face of it, from the letter the appellant is 5 pounds short of the minimum financial requirement that he has to show. The letter does not confirm the length of his employment although this could be calculated from the other documents supplied.

69. I therefore find that the appellant has not complied fully with the financial requirements set out in Paragraph 2(b) in that the letter from the employer does not confirm all of the information required and in particular the confirmation required by Rule 2(b)(iii).
70. The entry clearance officer refers to the need for the documents to be dated no earlier than 28 days before the date of application, presumably having in mind FM-SE A1(1) which I have set out above.
71. However in this case the appellant is not required to provide specified evidence relating to a period which ends with the date of application. This is because he has changed employers and any period of salaried employment in the period of 12 months prior to the date of application is acceptable. I therefore do not consider that the letter from the sponsor's employer, namely HMRC who issued the payslips, should also be dated within 28 days of the date of application. However, in any event, I find that the appellant has failed to provide the specified financial information namely a letter from his employer dealing with all the information required by Rule 2(b).
72. There is no near miss principle in complying with the financial evidence rules. The appellant suggests that there should be some evidential flexibility however the rules do not in this instance allow evidential flexibility. The appellant has submitted a specified document namely a letter from his employer but it fails to deal with all aspects. The missing information is not verifiable from other documents. The payslips show the appellant is receiving variable sums, it is not possible to work out what the appellants annual salary necessarily is. There could be some variation. To show a gross income of £18,600 or more the sponsor depends upon the payment of an annual attendance allowance which is a variable. Page 382 suggest that this is variable depending upon shift rotas. Without that, the payslips show a monthly salary of £1,549.58 which equates to the sponsors stated salary of £18,595 per annum.
73. It follows that the appellant has failed to provide all of the specified financial evidence and has not shown that the financial requirement of £18,600 gross annual income is met.
74. Although I have taken issue with some of the entry clearance officers findings I find that the decision to refuse the application under the rules is correct.
75. I have found that the financial requirements of Appendix FM are not satisfied and therefore the appeal cannot succeed under the Immigration Rules.
76. The primary reason for finding that the financial requirements are not satisfied, is the failure to provide an employer's letter containing all the specified information, which means that paragraph 2 of Appendix FM-SE is not satisfied. I do not find that it has been proved by the production of specified evidence, that the Sponsor had an annual income in excess of £18,600."

The judge then went on to consider Article 8 and found that the respondent's decision was not disproportionate.

5. The appellant applied for permission to appeal and permission to appeal was granted by the First-tier Tribunal on 26 February 2016. There was a respondent's response on 3 March 2016 disagreeing with the appellant's grounds and pointing out that the draftsman of the response had not had sight of certain documents referred to in the grounds.
6. At the hearing before me the sponsor said that in addition to the letter from the Inland Revenue he had also placed before the respondent a letter from the Home Office dated 6 March 2014 giving his salary of £22,515 per annum.
7. Mr Bramble helpfully reviewed the material that had been put in for the Entry Clearance Officer. It was noted that the First-tier Judge did not have a respondent's bundle. The judge had resolved some of the concerns in favour of the appellant for example at paragraph 64 of the decision as well as paragraph 66. Mr Bramble accepted that the applicant's claim to have lodged the letter from his current employers appeared to be supported by the material put forward. It did not appear that this particular document had been taken into account by the First-tier Judge. On the balance of probabilities it appeared that the specified documents had been put forward. It was to be noted that there was continuity of employment between the appellant's employment with HMRC and the Home Office and the fact that the previous salary fell only £5 short of the requirement. It was open to the respondent to consider all the documents submitted if the submitted documentation did not contain all the specified evidence. The First-tier Judge had plainly not been assisted by the absence of a bundle from the respondent. In the light of these points Mr Bramble submitted that the appellant got home as he put it.
8. In the light of the helpful submissions and concessions made by Mr Bramble I find that the appellant's appeal should be allowed. It appears that on any view the sponsor was only £5 short of the required salary in his previous employment and in respect of his current employment with the Home Office his salary is well above what the Rules require. In the light of Mr Bramble's very helpful concession it is not necessary for me to set out at any length the reasons for finding that the First-tier Judge materially erred in law. As I have said, the First-tier Judge was plainly not assisted by the fact that there was no respondent's bundle. I have had the benefit of Mr Bramble's submissions and observations. It is clear for the reasons given by him that the appellant succeeds in relation to the financial requirements and I allow the appeal on that ground also.
9. I remake the decision:

Appeal allowed.

ANONYMITY

The First-tier Judge made no anonymity order and I make none.

TO THE RESPONDENT
FEE AWARD

As I have allowed the appeal any fee paid by the appellant should be returned.

Signed

Date 13 April 2016

G Warr
Judge of the Upper Tribunal