



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: HU/00537/2017

**THE IMMIGRATION ACTS**

Heard at Field House  
On: 10 August 2018

Decision & Reasons Promulgated  
On: 03 September 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE CHANA

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MRS JINAL TUSHAR LIMBACHIA  
(NO ANONYMITY DIRECTION MADE)

Respondent

**Representation:**

For the Appellant: Ms A Fijiwala, Senior Presenting Officer  
For the Respondent: Mr P.J. Ward, Solicitor

**DECISION AND REASONS**

1. The appellant before the Upper Tribunal is the Secretary of State for the Home Department and the respondent is a citizen of India born on 22 March 1990. However, for the sake of convenience, I shall continue to refer to the latter as the “appellant” and to the Secretary of the State as the “respondent”, which are the designations they had in the proceedings before the First-tier Tribunal.
2. The appellant appealed to the First-tier Tribunal against the decision of the respondent refusing her application for settlement to join her husband and sponsor settled in the United Kingdom which was allowed by First-tier Tribunal Judge S. J. Clarke.

3. Permission to appeal was granted to the respondent by First-tier Tribunal Judge Alis on 20 June 2018. The permission Judge stated that it is arguable that the challenge to the Judges approach of the evidence of income of the sponsor amounted to an error of law.
4. Thus, the appeal came before me.
5. The First-tier Tribunal Judge allowed the appellant's appeal and found that the appellant and her sponsor were in the genuine and subsisting marriage and the appellant had demonstrated that her sponsor was earning at least £18,600 from his two jobs in this country.
6. The respondent takes issue with the Judge's consideration of the financial details in paragraph 17-22 of the decision. The respondent states that the First-tier Tribunal Judge relied upon a witness statement of Mr Kumar at paragraph 18 to conclude that the appellant meets the financial requirements. The Judge notes that Mr Kumar explained the discrepancies down to the lack of experience of Mr Kumar's employee from lack of experience. Additionally, the respondent states that some of the appellant's wage slips were not produced over this period due to similar discrepancies. The respondent states that the Judge erred in law in not considering the independent evidence that from HMRC and relying solely on the evidence provided by the appellant's employer. The respondent stated that the Judge also failed to consider the lack of evidence produced by the appellant. The Judge stated that the appellant failed to provide sufficient evidence in the form of wage slips to sufficiently demonstrate he could meet the financial requirements. The Judge has not considered all matters sufficiently.
7. At the hearing it was submitted by Ms Fijiwala that all the discrepancies found by the entry clearance officer have not been properly addressed by the appellant. She said that there was no information that Mr Kumar owned the business. Mr Ward on behalf of the appellant stated that the appellant provided all the documents and explained the discrepancies. He said that the discrepancy amount to about £2 and £1.50 which was de minimis and have been explained as technical errors of an employee. He said that the appellant also provided an employer's letter. He said that the appellant's sponsor's second job was six months before the hearing. In response Ms Fijiwala said that there is nothing which links Mr Kumar to the business.
8. The Judge noted that the difficulty for the appellant was that there were some anomalies in the documents produced by Compare Parking Deals Limited. The Judge however accepted the witness statement from Mr Kumar which he noted is very detailed and extensive and explains that he is the general manager of the company and the sponsor is one of his three employees and it is a small business. He considered Mr Kumar's explanation that he was not aware of any irregularities and the sponsor drew

his attention following the refusal decision. It was stated that the irregularities are the result of one of the employees of Mr Kumar, who was instructed to carry out a great many of the administrative tasks because the couple informed the company lacked experience. The Judge accepted his evidence.

9. The Judge stated that the discrepancies in the six months' payslips and payments into the bank the following month being less than £2 and overall cancelled out by over and under payments. The Judge found that there was no reason for him not to accept Mr Kumar's evidence which is extensive and goes beyond the financial irregularity of the sponsor's documents and the page from company's house shows a slightly oddity by the appointment and the resignation following swiftly on.
10. The Judge found that the appellant provided evidence of his two jobs, one with Compare Parking job and the other Matalan job for which he earns the minimum requirement of £18,600.

#### **Findings as to whether there is an error of law**

11. The respondent appeals the First-tier Tribunal Judge's decision based on the Judge's not considering the independent evidence of a letter from the HMRC but relied solely on evidence provided by the appellant's employers Mr Kumar's witness statement but who did not attend the hearing. However, the respondent did not take issue with any of the other requirements of the immigration rules other than financial requirements.
12. Having considered the decision by First-tier Tribunal Judge found that the discrepancies in the appellant's payslips have been explained and there are of minimal amount of no more than £2. The Judge accepted the explanation that it was a mistake by one of the company employees who was not very experienced.
13. Much reliance is based on the fact that Mr Kumar, the owner of the company, did not attend the hearing so that he could be cross-examined. The Judge considered the witness statement of Mr Kumar which he found to be very detailed and extensive. He accepted the explanation of Mr Kumar that he was not aware of any irregularities until the sponsor drew his attention following the refusal decision by the respondent.
14. The Judge noted the explanation that the irregularities are as a result of one of the company employees Mr Pawar who was instructed to carry out a great many of the administrative tasks because the couple who formed the company lacked experience. The Judge stated that Mr Pawar went beyond his remit and went as far as to appoint himself a director only to resign two days later and that this is after the date of decision. The Judge stated "I have considered carefully Mr Kumar has written, noting he did not attend the hearing to be cross-examined, or provide other supporting evidence such as counsel's opinion, but accepting that it goes slightly beyond this appeal because Mr Pawar appears to have committed a number of irregular acts.

15. The Judge found that there is no reason for him not to accept what Mr Kumar has written because it is detailed and extensive and goes beyond the financial irregularities of the sponsor's documents and a page from Company's House. He said that it shows a slight oddity by the appointment and resignation following swiftly on. This demonstrates that the Judge was aware of the irregularities and found that they had been adequately explained.
16. The Judge found the P60s accords with the sponsor has said about his finances. Having considered the evidence in the round the Judge found that the sponsor has been earning more than £18,600 as at the date of application and at the date of hearing.
17. I find that the First-tier Tribunal judge considered all the evidence in the round and came to a sustainable conclusion. I find that the respondent's appeal is no more than a disagreement with the conclusions reached by the Judge on the evidence which included Mr Kumar's written statement, even if he was not presented for cross examination. It is not always the case that a witness must be presented for the Judge to take into account the evidence provided by a witness, but it depends on the weight to be given to such evidence. It was open for the Judge to conclude that the evidence provided by the appellant including Mr Kumar's evidence was sufficient for the appellant to satisfy the immigration rules. The respondent has not set out in his grounds of appeal exactly what it is in the HMRC letter which contradicts the appellant's evidence.
18. I am of the view that to set aside a decision by a First-tier Tribunal Judge should only be done if there is an error of law which is material. I find that there is no material error of law in the decision because the Judge heard the appellant's evidence and found him to be credible. The Judge has explained in the decision for why he found that the appellant meets the financial requirements from his two jobs which he has had in this country.
19. I therefore find that there is no material error in the decision of the First-tier Tribunal and the decision stands.

## **DECISION**

The Secretary of State's appeal is dismissed

Signed by  
Mrs S Chana  
A Deputy Judge of the Upper Tribunal

Dated this 23<sup>rd</sup> day of August 2018