



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/14525/2017

THE IMMIGRATION ACTS

Heard at Manchester
On 15th May 2019

Decision & Reasons Promulgated
On 16 May 2019

Before

DEPUTY UPPER TRIBUNAL JUDGE MANDALIA

Between

MRS GUL ZAMINA MATEE
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr. Matee, Sponsor

For the Respondent: Mrs. Z Young, Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal against the decision of First-tier Tribunal (“FtT”) Judge Caswell promulgated on 11th June 2018. The underlying decision that was the subject of the appeal before FtT was the decision of the Entry Clearance Officer dated 11th

October 2017, to refuse the appellant's application for entry clearance as the partner of a British citizen.

2. In the decision refusing the application for entry clearance, the respondent noted that the appellant is unable to satisfy the financial requirements set out at paragraphs E-ECP.3.1 to 3.4 of the immigration rules. The appellant relied on the income of the sponsor from two jobs. The respondent interviewed the appellant's sponsor, and one of the sponsor's employers. Having done so, the respondent referred to the answers given, and concluded that the minimum income requirement is not met by the appellant. The respondent did not suggest that the income relied upon fell below the applicable £18,600 threshold, but made the rather different point that on the evidence, the respondent was not satisfied that the financial threshold is genuinely met. That was because the respondent had doubts as to the genuineness of the employment with Yousif Food Ltd trading as Mama Jane's, following a consideration of the answers given during interview. The respondent did not claim in the decision that the appellant had failed to provide the specified evidence required under Appendix FM-SE of the immigration rules.
3. The appeal was determined by the FfT Judge on the papers. At paragraph [13] of the decision, the FfT Judge states:

“Looking at the evidence before me, if I take the appellants case of that highest, her sponsor earns £6,143.28 gross per year, which is well below the financial requirement of £18,600. In addition, there is an absence of specified evidence to support the application under Appendix FM-SE. There are no bank statements showing the wages received by the sponsor.”

4. In the grounds of appeal, the appellant refers to the fact that the sponsor is working for two different companies, and his combined income from that employment, exceeds the relevant threshold. The appellant contends that the FfT Judge appears not to have had regard to the sponsor's other employment, which did not appear to be in issue.

5. Permission to appeal was granted by FfT Judge Simpson on 13th August 2018. The matter comes before me to consider whether the decision of the FfT involved the making of a material error of law, and if so, to remake the decision.
6. Before me, Mrs Young confirmed that the appellant claimed from the outset that her sponsor is employed by two separate employers. The appellant's sponsor claimed that he was employed by Yousif Food Ltd (*t/a Mama Jane's*) and received an annual income £6143.28 from that employment. He also claimed to have an annual income of £15,882.39 from employment with Web Help UK. That is a combined annual income of £22,025.67, and is capable of satisfying the minimum income requirement. However the respondent was not satisfied that the sponsor's employment with Yousif Food Ltd (*t/a Mama Jane's*) is genuine, and if that income is discounted, the appellant cannot satisfy the minimum income requirement.
7. Mrs Young accepts, rightly in my judgment, that having had the opportunity of considering the decision of the FfT Judge, the Judge appears to have reached to the conclusion that the minimum income requirement could not be met because the sponsor's earnings were, at their highest, £6,143.28 gross per year. That however fails to take into account the undisputed earnings of the appellant's sponsor of £15,882.39 from his employment with Web Help UK. The Judge also refers to there being no evidence to support the application under Appendix FM-SE, when that did not appear to be in issue. She concedes, rightly in my judgment, that in the circumstances, the decision of the FfT cannot stand. She concedes that the decision of the FfT contains a material error of law and should be set aside.
8. The FfT Judge was not assisted in determining the appeal by the respondent's failure to provide a transcript of the interview that was relied upon by the respondent to support the claim that the sponsor's employment with Yousif Food Ltd (*t/a Mama Jane's*) is not genuine, and the income relied upon from that employment, must therefore be discounted. There was equally an absence of evidence filed by the appellant to address the concerns of the respondent and matters relied upon by the respondent, in the decision to refuse entry clearance.

9. Be that as it may, I must consider whether to remit the case to the First-tier Tribunal, or to re-make the decision myself. It seems to me that it is entirely appropriate for a copy of the relevant interview records to be filed and served by the respondent, and for the appellant to have a proper opportunity to address that evidence. Mrs Young, helpfully provided a copy of the interview record to the appellant's sponsor at the end of the hearing before me. I have decided that it is appropriate to remit this appeal back to the First-tier Tribunal, having taken into account paragraph 7.2 of the Senior President's Practice Statement of 25th September 2012. In my view, in determining the appeal, the nature and extent of any judicial fact-finding necessary will be extensive.

10. The parties will be advised of the date of the First-tier Tribunal hearing in due course. In readiness for the hearing of the appeal I also direct that:
 1. The respondent shall, within 14 days, file with the Tribunal and serve upon the appellant, a transcript of the record of the interview with the appellant's sponsor, and the sponsors employer, that is referred to in the decision to refuse entry clearance.

Notice of Decision

11. The appeal is allowed and the appeal is remitted the FtT for a fresh hearing of the appeal, with no findings preserved.

Signed

Date

15th May 2019

Deputy Upper Tribunal Judge Mandalia

TO THE RESPONDENT

FEE AWARD

I have allowed the appeal and remitted the matter to the FfT for hearing afresh. Whether it is appropriate to make a fee award will be a matter for the FfT Judge in due course.

Signed

15th May 2019

Deputy Upper Tribunal Judge Mandalia