



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/17140/2017

THE IMMIGRATION ACTS

Heard at Cardiff Civil Justice Centre
On 9 January 2020

Decision & Reasons Promulgated
On 15 January 2020

Before

UPPER TRIBUNAL JUDGE GRUBB

Between

HUSLAM ALI

Appellant

and

ENTRY CLEARANCE OFFICER

Respondent

Representation:

For the Appellant: Mrs S Katun of Taj Solicitors

For the Respondent: Mr C Howells, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Bangladesh who was born on 10 February 1976. On 26 February 2017, he made an application for entry clearance to join his spouse (Mrs [MB]), who is a British citizen, in the UK.
2. On 8 November 2017, the Entry Clearance Officer (“ECO”) refused the application under the relevant ‘partner’ provisions in Appendix FM (EC-P) and Art 8 outside the Rules.

3. The basis of the ECO's decision was that he concluded that the appellant had been dishonest in putting forward false information about the sponsor's income in the UK and that the submitted documentation did not establish that the appellant (by the claimed income of the sponsor) satisfied the 'financial requirements' in Appendix FM of demonstrating an income of at least £18,600. Finally, not being satisfied that the appellant met the requirements of the Rules, the ECO concluded that the decision not to grant entry clearance was a proportionate interference with the appellant's Art 8 rights.
4. The appellant appealed to the First-tier Tribunal. Judge Suffield-Thompson dismissed the appeal.
5. Having heard the sponsor give evidence, the judge was not satisfied that the respondent had established that the appellant (and sponsor) were dishonest in asserting the sponsor's claimed employments in the UK. However, the judge was not satisfied that the appellant had submitted the required 'specified documents' under Appendix FM-SE in order to establish the sponsor's claimed income with her two employers for the required 6 months prior to the application. In particular, at para [33] the judge concluded that, in a run of monthly wage slips between August 2016 and February 2017, the wage slips for October, November and December 2016 were missing from the bundles and had not been submitted with the application. There were also missing corresponding bank statements also required by Appendix FM-SE. Having concluded that the appellant could not establish that he met the requirements of the Rules, the Judge concluded that the decision to refuse entry clearance was not a breach of Art 8.
6. The appellant was granted permission to appeal to the Upper Tribunal by the F-tT (Judge N Haria) on 30 August 2019, inter alia, on the ground that the judge had been wrong to find that there were missing documents from the application and that, in fact, the appellant met the financial requirements of Appendix FM on the basis of the required specified documents under Appendix FM-SE submitted with his application for entry clearance.
7. At the hearing before me, Mr Howells who represented the ECO accepted that the required wage slips and corresponding bank statements covering the 6-month period prior to the application were indeed in the file and had been submitted with the application. He accepted that the judge had been wrong to conclude that they were not submitted with the application. Mr Howells accepted that the appellant, on the basis of this evidence, had in fact established that he met the financial requirements of the Rules on the basis of the required specified evidence. Mr Howells accepted that, there being no issue in respect of any other requirement of the 'partner' rules in Appendix FM, the appellant had established that he was entitled to entry clearance as a 'partner' under those Rules. Mr Howells invited me to set aside the judge's decision and re-make the decision. Accepting that the appellant met the requirements of the Rules, Mr Howells saw no reason why the appeal should not be allowed under Art 8.

8. I am satisfied that the judge did err in law in reaching her adverse finding under the Rules. The specified documents were both in the Tribunal's bundles and, as was accepted by Mr Howells, had been submitted with the application. These documents comply with Appendix FM-SE and establish that the appellant met the financial requirements in E-ECP.3.1 and 3.2 based upon the sponsor's income from her two genuine (as accepted after the judge's decision) employments in the UK over the relevant 6-month period prior to the application. There being no other issue taken under the Rules, as Mr Howells conceded, the appellant meets the requirements for entry clearance as a partner.
9. In those circumstances I am satisfied, as Mr Howells effectively conceded, that the refusal of entry clearance is a disproportionate interference with the undoubted (and not challenged) family life the appellant enjoys with his spouse in the UK and is, as a consequence, a breach of Art 8 (see TZ (Pakistan) and another v SSHD [2018] EWCA Civ 1109 at [34]).

Decision

10. The decision of the First-tier Tribunal to dismiss the appellant's appeal involved the making of an error of law. I set it aside.
11. I remake the decision allowing the appellant's appeal under Art 8 of the ECHR.

Signed



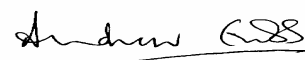
A Grubb
Judge of the Upper Tribunal

9 January 2020

TO THE RESPONDENT
FEE AWARD

Having allowed the appeal on a basis upon which the First-tier Tribunal should also have allowed the appeal, I make a full fee award for any fee which has been paid by the appellant.

Signed



A Grubb
Judge of the Upper Tribunal

9 January 2020