



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: OA/08672/2013

**THE IMMIGRATION ACTS**

Heard at Bradford  
On 17<sup>th</sup> July 2014

Determination Promulgated  
On 30<sup>th</sup> July 2014

Before

UPPER TRIBUNAL JUDGE D E TAYLOR

Between

SADIA QURA TUL AIN

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Mr S Saleem of RKS Solicitors

For the Respondent: Mr M Diwncyz

**DETERMINATION AND REASONS**

1. This is the Appellant's appeal against the decision of Judge Gladstone made following a hearing at Manchester on 31<sup>st</sup> January 2014.

**Background**

2. The Appellant is a citizen of Pakistan born on 29<sup>th</sup> August 1993. She applied to come to the UK as the spouse of a British citizen but was refused entry clearance on 13<sup>th</sup> March 2013. The Entry Clearance Officer was not satisfied with the evidence provided by the Sponsor in relation to his rental income. It is not disputed that he

was, at the time of the decision, in employment with HSBC and he earned £15,300. In order to meet the financial requirements of the Rules he needs to earn £18,600. It is claimed that he receives rental income of £7,200 per annum.

3. The Entry Clearance Officer set out the evidential requirements which must be provided in order to meet the requirements of the Rules as specified in Appendix FM-SE and stated that the Sponsor had not provided any evidence that he owned the property from which he received a rental income.
4. The Appellant appealed on the grounds that she did supply the relevant documentation and she pointed to the covering letter from her representatives which refers to a large number of documents being produced with the application form including "title information document".
5. The judge said that it was regrettable that the covering letter submitted with the application was not more specific in relation to documents apparently enclosed. It was therefore difficult to identify the various documents. She said that she did not understand why if all of the documents were submitted with the covering letter as claimed the Entry Clearance Officer would omit some of them from the bundle and indeed state in the refusal notice that no evidence had been provided to confirm that the Sponsor owned the property from which he received a rental income. She referred to the Grounds of Appeal which referred to "additional documents" which in her view indicated that they had not previously been submitted.
6. The judge assessed the oral evidence and the documentary evidence. She found that there were a number of internal discrepancies within the documents and said that she did not find the Sponsor's evidence to be credible and wrote as follows:

"Mr Kahut also submitted that the ECO had been satisfied in relation to the rental income and had only not been satisfied in relation to property ownership. That is so but given the appeal grounds and the subsequent evidence submitted on behalf of the Appellant it is clear that the requirements of paragraph 10 of Appendix FM-SE have not been met for all the reasons set out above."
7. The judge considered Article 8. She referred to the Sponsor's P60 for the tax year to 5<sup>th</sup> April 2013 which shows that his income from his salaried employment with HSBC was now £16,382.39. There was also an HMRC letter of 2<sup>nd</sup> December 2013 in relation to the tax code for the year 2013 to 14 referring to property income of £5,732. This was the same figure in the rental income statement for the year ending 5<sup>th</sup> April 2013 prepared by the Sponsor's accountants.
8. The judge concluded that it would appear that the Sponsor's income is (still) in excess of the minimum of £18,600 and on that basis a fresh application could be made. She dismissed the appeal on all grounds.

### **The Grounds of Application**

9. The Appellant sought permission to appeal on the grounds that the judge had erred in not taking into account all of the relevant evidence namely that the Sponsor has provided sufficient documents to verify his rental income including his PAYE coding notice, and is in a position to reach the relevant financial threshold.
10. Permission to appeal was granted by Judge Osborne for the reasons stated in the grounds on 25<sup>th</sup> April 2014.

### **Submissions**

11. Mr Saleem submitted that the documents before the judge showed that there was rental income for the relevant period and had failed to recognise that the documents had in fact been provided.
12. Mr Diwncyz submitted that the Sponsor had not provided all of the relevant evidence to the Entry Clearance Officer. He had only provided bank statements for six months between April and October 2012 and there was nothing in those statements which could distinguish the rent within the cash deposits. No schedule had been provided. Moreover there was nothing from Revenue & Customs for the relevant year.
13. By way of reply Mr Saleem submitted that it was not unreasonable to conclude that the Entry Clearance Officer had made a mistake in not recording all of the evidence which had been submitted.

### **Findings and Conclusions**

14. It was open to the Immigration Judge to conclude on the evidence that the Appellant had not provided the specified evidence as set out in Appendix FM-SE. Paragraph 10 reads as follows:

“In respect of non-employment income all of the following evidence, in relation to the form of income relied upon must be provided:

- (a) To evidence property rental income:
  - (i) Confirmation that the person or the person and their partner jointly own the property for which the rental income is received, through:
    - (1) the title deeds of the property; or
    - (2) a mortgage statement.
  - (ii) Monthly personal bank statements for the twelve month period prior to the date of application showing the rental income was paid into an account in the name of the person or of the person and their partner jointly.

(iii) A rental agreement or contract.”

15. As the judge pointed out the solicitors’ reference to “title information document” does not establish that the title deeds were provided since it is clear that the Entry Clearance Officer believed that they had not been. This was the basis of the refusal. It was not irrational for the judge to consider that the reference to additional documents in the Grounds of Appeal implied that they had not been submitted previously.
16. If the specified evidence had not been submitted, then the judge was bound to dismiss the appeal.
17. Moreover it was accepted that the rental income was not distinguishable as a separate payment into the bank account moreover, in a careful and detailed analysis, the judge identified clear difficulties with the documents which had been provided.
18. So far as Article 8 was concerned the documents from the Inland Revenue do not establish that the Sponsor was in a position to meet the requirements of the Rules at the relevant time. Whilst it may well be that he is now in a position to do so there is no error of law in the judge declining to allow the appeal on human rights grounds for the reasons which she gave.

### **Decision**

19. The judge did not err in law and her decision stands. The appeal is dismissed.

Signed

Date

Upper Tribunal Judge Taylor