



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: OA/08826/2013

THE IMMIGRATION ACTS

Heard at Field House
On 29 July 2014

Determination Promulgated
On 20 August 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE G A BLACK

Between

MS RUJINA BEGUM

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M A Kalam (Solicitor)
For the Respondent: Mr J Parkinson, Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant whose date of birth is 15 January 1988 is a citizen of Bangladesh. This matter comes before me for consideration as to whether or not the First-tier Tribunal (Judge Pedro) made a material error of law. In a determination promulgated on 13

May 2014 the appeal against the Entry Clearance Officer's decision to refuse entry clearance as a partner under Appendix FM was dismissed.

Background

2. In reasons for refusal it was considered that the appellant incorrectly applied under category A. Category B applied where a sponsor was employed for less than six months as at the date of application. The sponsor is required to list all employment during the twelve month period prior to the date of application to establish evidence of income of £18,600 over that period. The appellant's evidence showed earnings from 25 April 12 to 8 July 12 of £17,640 per annum. The appellant failed to submit specified documents including P60, wage slips, letter from spouse's employer confirming employment and annual salary, a signed contract of employment and bank statements corresponding to the same period as the wage slips. The appellant produced no evidence of any savings held.
3. The Entry Clearance Manager upheld the refusal. Whilst the appellant may be able to demonstrate that she met the Rules at the date of decision, the Rules require to be met at the date of application with regard to evidence of specified documents.
4. The Tribunal found that the sponsor's employment commenced less than six months prior to the date of the application. At [10] the Tribunal found that the appellant had not produced wage slips for any period of salaried employment for the relevant twelve month period and further that none were produced at the hearing.
5. The Tribunal declined to adopt Mr Kalam's submission that a decision could be made having regard to the evidence as at the date of decision[11]. The Tribunal considered the guidance in **Gulshan (Article 8 - new Rules - correct approach) [2013] UKUT 00640 (IAC)** and found no good grounds or compelling circumstances.
6. The grounds of appeal argued that the Tribunal :
 - (a) erred in law by failing to consider the wage slips and bank statements contained in the respondent's and appellant's bundles, including all wage slips from E & HCT Limited and Stagecoach London; and
 - (b) materially erred by not considering the position as at the date of decision; and
 - (c) alternatively failed to consider whether this matter ought to be remitted to the Entry Clearance Officer in light of the decision in **MM and Others v SSHD [2013] EWHC 1900 (Admin)**.

Permission to Appeal

7. Permission to appeal was granted by First-tier Tribunal Judge Simpson on 9 June 2014. Her reasons were that the Tribunal failed to take into account documentary evidence of bank statements and pay slips included in the bundles for the hearing. The respondent's bundle contained pay slips and bank statements from 3 May 2012 to 5 November 2012 and the appellant's bundle contained pay slips from 3 May 2012 until 4 January 2012.

Error of Law Hearing

8. Mr Kalam relied on the two grounds of appeal and his skeleton argument. He accepted that the documents provided by the appellant should meet the requirements under category B. He submitted that the relevant date was the date of decision (Section 85(5) of the Nationality, Immigration and Asylum Act 2002 as amended). The appellant submitted bank statements, pay slips from two jobs and evidence of savings of £57,000 in a bank account. The Tribunal erred having found no evidence of wage slips or bank statements [15]. Further the Tribunal failed to make any findings on the evidence of savings. Mr Kalam acknowledged that this had not been pleaded in his grounds of appeal.
9. Mr Parkinson referred to the requirements under Appendix FM-SE for evidence to be produced as at the date of application. There was no evidence of any savings before the Entry Clearance Officer. The appellant failed to demonstrate that the financial requirements were met. It was clear that the Entry Clearance Officer did not have adequate evidence in the specified format to cover the specified period required. There was no error of law in the determination.
10. At the end of the hearing I found no material error of law in the determination. I now give my reasons.

Reasons for Decision

11. The Tribunal erred by stating in that there was no evidence of wage slips and bank statement [10], when in fact such evidence was produced in the bundles for the hearing. I find that this is an error of law. It is not a material error, however, because that evidence fails to meet the requirements of the Rules at the specified time, namely the date of application, for the specified period, and in the specified format. I find no error in relation to evidence of savings; an issue not raised in the grounds of appeal and in any event there is no sustainable argument in light of the recent decision to overturn **MM v SSHD [2013] EWHC 1900 (Admin)**. It is clearly open to the appellant to make a fresh application. The Tribunal judge's factual error in the determination with regard to the documentary evidence does not amount to a material error of law.

Decision

12. There is no material error of law in the determination.
13. The determination shall stand.

Signed

Date 19.8.2014

Deputy Upper Tribunal Judge G A Black