



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: OA/17818/2013

THE IMMIGRATION ACTS

Heard at Bradford
On 23rd April 2015

Decision and Reasons Promulgated
On 19th May 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE KELLY

Between

THE ENTRY CLEARANCE OFFICER - ISTANBUL

Appellant

and

MRS PARASTOO SHAFIE
(ANONYMITY NOT DIRECTED)

Respondent

Representation:

For the Appellant: Mrs R Pettersen, Senior Home Office Presenting Officer
For the Respondent: Mr G Brown, Counsel instructed by Legal Justice Solicitors

DECISION AND REASONS

Introduction

1. The Entry Clearance Officer appeals against the decision of Judge Hindson to allow the appeal of Mrs Parastoo Shafie against refusal of her application for entry clearance as the spouse of a person present and settled in the United Kingdom. For ease of reference, I shall hereafter refer to the parties in accordance with their status in the First-tier Tribunal.

Background to the appeal

2. The appellant is a citizen of Iran who was born on the 18th July 1989. On the 30th April 2013, she applied for entry clearance as the spouse of Mr Hamid Beshkar (hereafter, "the sponsor"). The respondent refused the application in two separate Notices of Immigration Decision. In the first, dated the 17th July 2013, the respondent refused the application on the ground that s/he was not satisfied that the appellant and sponsor were in a genuine and subsisting relationship. In the second, dated the 24th June 2014, it was additionally refused on the ground that the appellant had not submitted all the 'specified documents' that were required by Appendix FM-SE of the Immigration Rules. So far as the latter was concerned, the respondent identified, by reference to each document specified by Appendix FM-SE in respect of a self-employed person, those documents that the appellant either had or had not submitted with her application.

The decision of the First-tier Tribunal

3. Judge Hindson found that the appellant had proved that her relationship was genuine and subsisting [see paragraphs 19 to 21]. That finding is not challenged by the respondent in this appeal.

4. Under the heading, 'The Financial Requirements', the judge said as follows:

"22 The sponsor has provided a number of documents in support of his claim to be self-employed as a mobile hairdresser. These include a letter from HMRC registering him as self-employed and advising him of his Unique Taxpayer Reference. I have evidence of payment of national insurance contributions in 2012 and 2013. I have copies of his tax return for the year ended April 2014. I have his tax calculations for that year which shows an income before tax of £19,594. I have the tax calculations for the year ended 2013 in which that figure is £12,811. I have receipts showing tax paid. In addition, the sponsor's bank statements are in the respondent's bundle.

23. Taking all the evidence in the round, I am satisfied that the appellant has a net profit before tax which is in excess of the £18,600 requirements. So far as the specified evidence is concerned, Mr Mullarkey was unable to point to any of the individual evidential requirements that had not been met. Miss Khan contended that all of the requirements had been met and took me to the relevant document in respect of each requirement. I am therefore satisfied that the specified evidence requirements are also satisfied."

The grounds of appeal

5. The grounds of appeal are conveniently summarised in the third paragraph of the grant by Upper Tribunal Judge Martin of permission to appeal:

"It is arguable, as asserted in the grounds, that the Judge has erred in looking at the documents and income at the wrong date. The relevant date under the Rules for income and the specified evidence as to income is the date of application, which was 30th April 2013."

Analysis

6. Mrs Pettersen relied upon the grounds of appeal. Mr George submitted that by reading paragraphs 22 and 23 of the judge's determination together, it could be inferred that the judge had before him evidence not only of the sponsor's tax return and calculation for the financial year ending in April 2014, but also that which immediately preceded the application as required by the Immigration Rules. I prefer the arguments of Mrs Pettersen for the following reasons.
7. It is far from clear from his determination that the judge did in fact have before him any or all the specified documents that were identified by the respondent as missing at the time of the application. Indeed, it is difficult to see why the judge should have made any reference at all to the sponsor's tax return and calculation for the year ending in April 2014 if he had been in possession of the relevant documents that were required by the Rules. Moreover, the mere fact that the Presenting Officer was "unable to point to any of the individual evidential requirements that had not been met" could not have assisted the appellant. This is because the onus was upon her to establish that the requirements of the Rules were met, rather than upon the respondent to establish that they were not. Furthermore, in view of the judge's earlier references to a tax return and calculation for the incorrect year, his generalised reference to Counsel having taken him "to the relevant document in respect of each requirement" is incapable of demonstrating that he had subjected her submission that "all of the requirements had been met" to any significant degree of scrutiny. I therefore set aside this aspect of his determination, whilst preserving that relating to the genuineness of the appellant's relationship with the sponsor.

The way forward

8. It obviously occurred to me that I might proceed to re-determine this appeal in the Upper Tribunal. However, I concluded that there were insuperable obstacles to my doing so. Although I had a faxed copy of the appellant's bundle of documents, it was by no means apparent that this contained the documents to which Judge Hindson had referred, albeit in the most general of terms, in holding that the requirements of Appendix FM-SE of the Immigration Rules were met. I therefore concluded that the fairest course was to remit the appeal to First-tier Tribunal, preferably to Judge Hindson, with a view to the making of specific findings as to how identified documents are said to meet the requirements of the Immigration Rules. In order to assist the Tribunal in this endeavour, I direct the appellant to draw up a schedule in which individual documents are (i) described, (ii) referred to by page number in an accompanying bundle, and (iii) cross-referenced to the particular provision of Appendix FM-SE to which they are said to relate. For the avoidance of doubt, I make it clear that (a) Judge Hindson's finding that the parties were in a genuine and subsisting marriage at the date of the decision is to be preserved, and (ii) the Tribunal may consider any such further documents as the appellant may submit with a view to showing that she meets the requirements of Appendix FM-SE of the Immigration Rules, provided (and I cannot stress this enough) they cover prescribed time-period(s) by reference to the date of the original application.

Notice of decision

9. The appeal is allowed on the ground that the First-tier Tribunal made a material error of law in its assessment of which documents were relevant to meeting the requirements of Appendix FM-SE.
10. The appeal is remitted to a judge of the First-tier Tribunal; preferably, but subject to the overriding discretion of the Resident Judge at Bradford, to Judge Hindson.

Anonymity is not directed.

Signed

Date

Judge Kelly
Deputy Judge of the Upper Tribunal