IAC-HW-MP-V2

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: OA/19308/2013

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 2 February 2015	**On 6 February 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE PEART

Between

MRS EMONENA OVIE
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms Anifowoshe of Counsel
For the Respondent: Mr Tufan, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant, Emonena Ovie, is a citizen of Nigeria and was born on 23 October 1978. She applied for entry clearance to come to the United Kingdom for settlement as the spouse of Gilford Onoguaye Ohwoghere Ovie, which application was refused by the respondent on 23 September 2013 because it was not accepted that the parties were in a genuine subsisting relationship and that the appellant had not provided the documentary evidence required in Appendix FM-SE of HC 395 in respect of the financial requirements. The respondent reviewed her decision after

receiving the appellant's notice of appeal. An explanatory statement dated 19 March 2014 said the decision was maintained.

2. The appellant's appeal against the respondent's refusal was allowed by Judge Aujla ("the judge") in a determination promulgated on 20 October 2014. The grounds claimed the judge made a material error of law. The Rules of specified evidence were comprehensively set out in Appendix FM and Appendix FM-SE to the Immigration Rules. They set out what types of evidence were required, the periods they covered and the format that they should be in. The judge had no regard to those evidence requirements at [25] of the determination where he set out his findings.

3. The sponsor was seeking to rely on income from two different employments to demonstrate that the income threshold requirements could be met by the appellant but bearing in mind that the sponsor in respect of the employment at TRG had only started working for that company from 19 March 2013 and the appellant having made her application for entry clearance on 3 July 2013 meant that at the date of application the sponsor had not been working for TRG for the requisite six months such that the requirements of Appendix FM-SE could not be met.

4. Judge P J M Hollingworth granted permission to appeal on 8 December 2014. He took the view that an arguable error of law had arisen in relation to the analysis conducted by the judge appertaining to the fulfilment of the requirements of the Rules.

Submissions on Error of Law

5. Mr Tufan relied upon the grounds. The appellant could not rely upon the sponsor's employment with TRG because as of the date of the application the sponsor had not been working for that company for the requisite six months such that the requirements of Appendix FM-SE could not be met.

6. As regards the employment with CMG:

   - there was no payslip for May 2013;
   - there was no employer's letter;
   - there were bank statements only for nine months out of the twelve months' requisite period showing the salary being paid into the sponsor's account.

7. Ms Anifowoshe accepted that the sponsor had not been working for TRG for the requisite period. She also accepted that the documentation at [6] above had not been supplied, which was required under Appendix FM-SC, however, she took the view that the appellant was saved by D(b)(i)(aa) and (e). Ms Anifowoshe submitted that there was a tension between the Immigration Rule and Section 85(2) and (5) of the 2002 Act. In any event, by the time of the hearing all of the documentation was before the judge which he took into account at [25] of the determination such that the

appellant satisfied the requirements of the Rules and the judge made no error of law.

Conclusion on Error of Law

8. Mr Tufan said that the main thrust of the respondent's refusal was with regard to the genuineness of the relationship; finances were only a secondary issue at the outset.

9. The grounds of appeal were generic in nature and did not address the specific issues raised in the refusal reciting only that the decision was not in accordance with the Rules and failed to take account of the available evidence before the ECO. The Entry Clearance Manager reviewed the decision comprehensively in a letter dated 19 March 2014. The requisite mandatory documents were set out and the deficiencies in the application highlighted.

10. The judge noted the explanatory statement at [6] of his determination but did not engage with the issues raised, perhaps because he took the view that the sponsor having supplied the outstanding documentation, he need not consider the Entry Clearance Manager's letter further. What the judge had to say in the final sentence at [25] was:

> *"The sponsor has provided all the mandatory documents that he was required to provide and I am able to take those into account because the documents related to a matter arising on the date of the decision."*

11. Clearly, the judge erred in finding that he could take into account the documentation supplied by the sponsor. Whilst there is a tension between the mandatory requirements of Appendix FM-SC and Section 85(2) and (5), that does not obviate the necessity of the appellant complying with the requirements of the Rules such that she can supply them as of the date of the hearing via the sponsor, rather than with her application. Further, the judge erred when he included the sponsor's earnings from TRG as he had been working for that company for a period less than six months prior to the date of the application.

12. The application was deficient in other respects which I have set out at [6] above. Ms Anifowoshe submitted that FM-SE D(b)(i)(aa) and (e) and 245AA were relevant to the application but she failed to explain how it was in the appellant's own particular circumstances that they assisted her. There were various deficiencies in the application. It was not merely that a sequence of documents had been submitted and some of the documents in the sequence had been omitted.

13. In my view, the Entry Clearance Manager acted reasonably and fairly in setting out in the letter of 19 March 2014 the inadequacies in the appellant's application. The proper course of action for the appellant at that stage was to submit another application, with the mandatory

documentation. I find the documentation supplied by the appellant to support her application was inadequate and incomplete and that could not be remedied by the sponsor at the hearing.

14. The respondent has shown an error of law in the determination such that the decision of the First-tier Tribunal should be set aside. I re-make the decision by dismissing the appeal.

Notice of Decision

15. Appeal dismissed.

No anonymity direction is made.

Signed Dated 2 February 2015

Deputy Upper Tribunal Judge Peart

TO THE RESPONDENT
FEE AWARD

I have dismissed the appeal and therefore there can be no fee award.

Signed Date 2 February 2015

Deputy Upper Tribunal Judge Peart