



**Upper Tribunal  
(Immigration and Asylum Chamber)**

Appeal Number: OA/06381/2013

**THE IMMIGRATION ACTS**

**Heard at Manchester**

**On 22<sup>nd</sup> September, 2014  
Given extempore  
Signed 10<sup>th</sup> October, 2014**

**Determination  
Promulgated  
On 10<sup>th</sup> October 2014**

**Before**

**Upper Tribunal Judge Chalkley**

**Between**

**MRS NAYA BIBI**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: M Kajue, instructed by Sandbrook. Solicitors, Counsel  
For the Respondent: Mr G Harrison, a Senior Home Office Presenting Officer

**DETERMINATION AND REASONS**

1. The appellant is a national of Pakistan, born on 24<sup>th</sup> January, 1992. She is the wife of Mr Shahid Ali, the sponsor. She made application to the Entry Clearance Officer Islamabad for entry clearance as a partner under Appendix FM of the Statement of Changes in Immigration Rules HC 396 as amended.

2. In a decision dated 5<sup>th</sup> January, 2013, the Entry Clearance Officer refused the application because wage slips for the six months prior to the date of application of the sponsor had not been submitted together with a letter from the sponsor's employer who issued the payslips, confirming the sponsor's employment and gross annual salary, the length of employment and the period over which the sponsor had been paid the level of salary stated in the visa application, and personal bank statements corresponding to the same period as the wage slips, showing that the salary has been paid into an account in the name of the sponsor or into the name of the sponsor and his partner jointly. The appellant appealed and her appeal was heard by First-tier Tribunal Judge Ransley on 15<sup>th</sup> October, 2014.

3. At paragraph 18 of her determination the judge made findings of fact. She said this:

*"On the evidence before me I make the following findings of fact. I find that the applicant submitted her application on 15<sup>th</sup> November, 2012. At the time of the application the sponsor had provided to the applicant five months' bank statement the latest bank statement in his possession at the time being the October 2012 one. The sponsor received his November 2012 bank statement on 15<sup>th</sup> November, 2012. It took five or six days for the bank statement to arrive in Pakistan by post. The appellant could not have received the sponsor's November 2012 bank statement until the week after she had submitted her application. As the appellant submitted only five months of the sponsor's bank statements 13<sup>th</sup> June, 2012, 13<sup>th</sup> July, 2012, 13<sup>th</sup> August, 2012, 13<sup>th</sup> September, 2012 and 13<sup>th</sup> October, 2012 she did not meet the requirements of Appendix FM-SE which requires six months of bank statements to correspond with the six months of payslips in respect of the sponsor's salaried employment."*

4. When the matter came for hearing before me, it became apparent that it had previously been adjourned by me on 25<sup>th</sup> July in order that the Home Office Presenting Officer could make enquiries of the Entry Clearance Officer. Enquiries reveal that the missing bank statement may have been before the Entry Clearance Officer, but if it was it was only a copy.

5. Counsel explained that the sponsor had sent his wife his bank statement on 16<sup>th</sup> November, 2012, on the day that he received it. That bank statement could not, therefore, have been submitted with the application, but it was submitted she said after the date of the application by the appellant. Unfortunately there was no evidence before Judge Ransley to show that the appellant did actually receive the bank statement from the sponsor, or that she had subsequently sent it to the Entry Clearance Officer.

6. Counsel pointed out that after the date of the Entry Clearance Officer's decision, a whole year's worth of bank statements and a whole year's worth of payslips had been sent by those representing the appellant to the Entry Clearance Officer, so that the Entry Clearance Officer could have been satisfied that the appellant met the requirements of the Rules. The difficulty with that submission is that the Rules, in the form of

Appendix FM-SE, require that the documents be submitted **with the application itself**.

7. It became apparent that Judge Ransley had not dealt with all the grounds of refusal by the Entry Clearance Officer.
8. The second ground of refusal was that the letter from the employer who issued the payslips confirming the sponsor's employment, does not actually confirm the gross annual salary. The letter of 10<sup>th</sup> October, 2012, merely confirms that the sponsor is a permanent security officer with Advanced Security UK Limited and that his employment began on 1<sup>st</sup> September, 2010. There was, it appears, evidence submitted in the form of a statement of earnings completed by a payroll assistant, setting out his gross pay to date up to 23<sup>rd</sup> October, 2012, but that does not meet the requirements of FM-SE either, because it does not state the gross annual salary or the length of employment.
9. Counsel suggested that the spirit of the Rules had clearly been complied with by the appellant, because the Entry Clearance Officer has, subsequent to the Entry Clearance Officer's decision, had a full one year's worth of payslips and bank statements. The Entry Clearance Officer knows very well the gross annual salary of the sponsor and knows also that the sponsor has been employed as a security officer since 1<sup>st</sup> September, 2010 by Advanced Security Limited.
10. However Appendix FM-SE 2(d) specifically requires an employer who issued the payslips confirming
  - “1. The person's employment and gross annual salary.
  2. The length of their employment.
  3. The period over which they have been or were paid the level of salary relied upon in the application; and
  4. The type of employment (permanent fixed-term contract or agency).”

For whatever reason presumably because she was satisfied that the appeal could not succeed in any event the judge did not go on to consider whether sufficient wage slips were submitted with the application or whether the letter that was submitted complied with the requirements of the Rules.

11. It is unclear whether all the wage slips were in fact submitted with the application, because the evidence the judge took is contradictory. The sponsor gave evidence at the hearing before her to say that the six months' wage slips were sent to his wife sometime between 20<sup>th</sup> and 25<sup>th</sup> October, 2012. However the six months' wage slips would include two

weekly wage slips for November. If they were sent by the sponsor to the appellant and there was no evidence before the judge that they were the evidence sent by the sponsor to his wife, there is still no evidence that the appellant actually submitted them to the Entry Clearance Officer.

12. However I believe that the reason the judge did not deal with the full grounds is because she was satisfied that the appeal could not succeed in any event, because the bank statement had not been submitted. Even if she was wrong in that, and even if the bank statement was submitted and even if the payslips had been submitted and were before the Entry Clearance Officer before the date of decision, it is quite clear that the letter from the employer simply does not comply with the requirements set out in Appendix FM-SE. Any error on the part of the judge would therefore not be material because it would not be capable of affecting the outcome of the appeal. I uphold her decision. This appeal is dismissed.

## Richard Chalkley

**Upper Tribunal Judge Chalkley**