



IAC-AH-DN-V1

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

Appeal Number: IA/33796/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 9 November 2015**

**Decision & Reasons Promulgated
On 17 December 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE RIMINGTON

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**MR MOAZAM FEROZE
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: Miss S Sreeraman, Home Office Presenting Officer
For the Respondent: M K Suri & Co, Solicitors

DECISION AND REASONS

The Appellant

1. The application for permission to appeal was made by the Secretary of State. Nonetheless, hereinafter, I shall refer to the parties as they were described before the First-tier Tribunal that is Mr Feroze as the appellant and the Secretary of State as the Respondent.

2. The appellant is a citizen of Pakistan born on 1 January 1972 and applied on 3 January 2014 for further leave to remain in the United Kingdom as the spouse of Amreen Akhtar. That application was refused by the Secretary of State on 14 August 2014 further to paragraph R-LTRP.1.1 on the basis that the appellant either had to meet all of the requirements of Section E-LTRP or alternatively meet the requirements of paragraph E-LTRP1.2 to 1.12 and E-LTRP2.1 and paragraph EX.1 applied.
3. Further to E-LTRP3.1 the applicant must provide specified evidence from the sources listed in paragraph E-LTRP3.2 of:-
 - (a) a specified gross annual income of at least:
 - (i) £18,600 ...
4. The appellant's application was refused because he did not meet the income threshold requirements with reference to Appendix FM-SE.
5. In particular he had failed to provide the specified documentation to evidence his spouse had an annual income at £18,600 prior to the date of application which was 3rd January 2014. He had failed to provide wage slips and bank statements stating the six months prior to the date of his application as his spouse commenced her employment with Croscontinent Ltd on 1 October 2013. He also failed to provide documentation to demonstrate the spouse had an annual income of £18,600 in the twelve months prior to the date of application.
6. Consideration was given to EX.1 that he had not submitted that there were very significant difficulties which would be faced by the applicant or his partner in continuing family life together outside the UK as determined by EX.2. His application was therefore refused under Appendix FM.
7. Further consideration was given to paragraph 276ADE but once again further to paragraph 276ADE(6) it had not been demonstrated that there would be very significant obstacles to his integration into the country to which he would have to go if he had to leave the UK.
8. His application was not considered to raise any exceptional circumstances. The appellant appealed.
9. First-tier Tribunal Judge Blum heard the appeal on 24 April 2015 and allowed the appeal on 12 May 2015.
10. An application for permission to appeal set out that as the sponsor had been employed for less than six months at the date of the application the sponsor must (i) have been earning at least £18,600 and (ii) have earned the threshold income in the past twelve months. In this case there is no evidence of the sponsor's earnings prior to October 2013. The application was made in January 2013 and the sponsor must show their earnings for the previous twelve months and there was no evidence of

earnings prior to October 2013. The judge failed to have regard to Appendix FM-SE Section 13(b).

11. Permission to appeal was granted by First-tier Tribunal Judge Hollingsworth.

Conclusions

12. Judge Blum found there was a narrow issue for him to consider and noted at paragraph 15 of his decision that the appellant's partner had not been employed by the current employer for at least six months. According to paragraph 2(a) of Appendix FM-SE the paragraph required "either six months' worth of payslips 'if the person has been employed by their current employer for six months'." He noted that the sponsor had earlier been employed by GB Properties. She commenced full-time employment on 1 October 2013 with Crosccontinent. The partner's annual salary based on her full-time employment which commenced on 1 October 2013 was £24,960.

13. The judge stated at paragraph 16:-

"16. As the partner had not been employed in the same capacity by Crosccontinental Ltd before 01/10/2013 the respondent should then have proceeded to consider paragraph 2(ii) of Appendix FM-SE, which indicated that account was to be taken of 'any period of salaried employment in the period of 12 months prior to the date of application if the person has been employed by their current employer for less than 6 months ...'. A clear reading of this paragraph does not require evidence of employment stretching over 12 months, but merely evidence of the salaried employment that was undertaken by the partner within the 12 month period prior to the date of application. As the partner in the present appeal has been employed from 01/10/2013 regard should have been given to that period of employment up to the date of the application, in conjunction with the wage slips produced covering that period and the bank account statements covering the same period showing the salary paid into the bank account. The appellant's partner had produced a letter from her employer providing all the details required by Appendix FM-SE (no issue was raised in regard to the letter by the respondent), wage slips in the correct format covering her employment from 01/10/2013 to the date of the application, which was consistent with her claimed gross income, and the corresponding bank account statements covering the same period which clearly showed the salary being paid into the bank account belonging to the partner. In the circumstances I am entirely satisfied that the appellant met the requirements of Appendix FM and Appendix FM-SE on the basis of the circumstances as they existed at the date of the application. The more recent bank account statements, wage slips and employers letter strongly reinforces my view in respect of the evidence adduced by the partner in respect of her employment prior to the date of the application."

14. The Rule in question reads as follows:-

"2. In respect of salaried employment in the UK (except where paragraph 9 applies), all of the following evidence must be provided:

- (a) Payslips covering:

- (i) a period of six months prior to the date of application if a person has been employed by their current employer for at least six months (and where paragraph 13(b) of this Appendix does not apply; or
- (ii) any period of salaried employment in the period of twelve months prior to the date of application if the person has been employed by their current employer for less than six months (or at least six months but the person does not rely on paragraph 13(a) of this Appendix) or in the financial years relied on by a self-employed person.”

15. The judge did not appear to regard Appendix FM-SE Section 13(b) which sets out this requirement:

“ ...

13(b) Where the person is in salaried employment in the UK at the date of application and has been employed by their current employer for less than six months (or at least six months but the person does not rely on paragraph 13(a)), their gross annual income will be the total of:

- (i) the gross annual salary from employment as it was at the date of application;
- (ii) the gross amount of any specified not employment income (other than a pension income) received by them or their partner in the twelve months prior to the date of application); and
- (iii) the gross annual income from a UK or foreign state pension or private pension received by them or their partner.”

16. Although the sponsor’s annual salary from her employment was £24,960 at the date of application she had not demonstrated that she had earned £18,600 in the twelve months prior to the application. The judge had failed to consider the second part of the requirement and erred in law.

17. At the hearing Miss Sreeraman referred to the Immigration Rules as set out in Appendix FM-SE and made particular reference to paragraph 13(b) and 15 which the judge had appeared to have overlooked.

18. Miss Suri conceded that the appellant could not comply with the Immigration Rules and indeed she submitted that she made that submission at the hearing but indicated that her submissions at the hearing before Judge Blum rested on the fact that the Home Office had invited the appellant following the decision in **MM (Lebanon)** [2014] EWCA 985 to make a further application or submit further evidence and the appellant chose to submit further evidence because he feared that any further application would mean that he would be refused under Appendix FM because he could not comply with the suitability requirements as he would be out of time. Miss Sreeraman pointed out that that would not have been the case because he still had leeway of 28 days under the suitability requirements of Appendix FM.

19. The judge, when he applied Appendix FM-SE, correctly acknowledged that an appellant could submit less than six months' worth of payslips but failed to acknowledge paragraph 13(b) and paragraph 15 of Appendix FM. In particular at paragraph 15 it states as follows:-

“15. In respect of paragraph 13(b) and paragraph 13(d), the provisions in this paragraph also apply:

- (a) In order to evidence the level of gross annual income required by Appendix FM, the person must meet the requirements in paragraph 13(b) or paragraph 13(d)(i);and
- (b) The person must also meet the level of gross annual income required by Appendix FM on the basis that their income is the total of:
 - (i) The gross income from salaried employment earned by the person in the 12 months prior to the date of application;
 - (ii) The gross amount of any specified non-employment income (other than pension income) received by the person or their partner in the 12 months prior to the date of application;
 - (iii) The gross amount received from a UK or foreign State pension or a private pension by the person or their partner in the 12 months prior to the date of application; and
 - (iv) The person cannot combine the gross annual income at paragraph 15(b)(i)-(iii) with specified savings in order to meet the level of income required.”

20. I therefore find that the judge made an error of law in his assessment of the evidence. The judge, however, did not proceed when he allowed the appeal to consider paragraph EX.1 and EX.2 or Article 8 both of which were raised in effect by Miss Suri and it was agreed that the matter should be remitted to the First-tier Tribunal for relevant finding.

21. The Judge erred materially for the reasons identified. I set aside the decision pursuant to Section 12(2)(a) of the Tribunals Courts and Enforcement Act 2007 (TCE 2007). Bearing in mind the nature and extent of the findings to be made, the matter should be remitted to the First-tier Tribunal under section 12(2) (b) (i) of the TCE 2007 and further to 7.2 (b) of the Presidential Practice Statement.

Signed

Date

Deputy Upper Tribunal Judge Rimington