



IAC-AH-CJ-V2

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

Appeal Number: OA/06063/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 24th April 2015**

**Decision & Reasons Promulgated
On 17th July 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE D N HARRIS

Between

**MRS NAJNEEN AKTHER
(NO ANONYMITY ORDER MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Miss S Azhar, Counsel

For the Respondent: Ms A Everett, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a citizen of Bangladesh born on 9th February 1988. The Appellant had applied for entry clearance as a partner under Appendix FM of the Immigration Rules. Her application had been refused by the Entry Clearance Officer on 13th April 2014.
2. The Appellant had appealed and the appeal came before Judge of the First-tier Tribunal Cockrill sitting at Taylor House on 13th January 2015. In a determination

promulgated on 19th January 2015 the Appellant's appeal had been allowed under the Immigration Rules.

3. On 26th January 2015 the Secretary of State lodged Grounds of Appeal to the Upper Tribunal. The background to the case and the appeal was that the Appellant had been refused entry clearance to the UK because the Entry Clearance Officer was not satisfied that the income threshold requirement was met. The judge had found that the Sponsor's income met the income requirement threshold of £18,600 in spite of the fact that the Sponsor's net income amounted to £17,089. This was due to the fact that the Sponsor, on his own admission, kept some of the wages paid in cash and did not pay it all into his bank account. The grounds contended that it was not open to the judge to count earnings paid in cash which have not been paid into a bank account and that as a result the judge had erred in law.
4. On 2nd March 2015 Immigration Judge Holmes granted permission to appeal. No Rule 24 reply is lodged on behalf of the Appellant.
5. It is on that basis that the appeal comes before me to determine whether or not there is a material error of law in the decision of the First-tier Tribunal Judge. This is an appeal by the Secretary of State but for the purpose of continuity throughout the legal process Mrs Akther is referred to herein as the Appellant and the Secretary of State as the Respondent. The Appellant is represented by Miss Azhar of Counsel. Miss Azhar is familiar with this matter having appeared before the First-tier Tribunal. The Secretary of State is represented by her Home Office Presenting Officer Ms Everett.

Submissions/Discussions

6. Ms Everett starts off by submitting that income was wrongly in fact considered by the Entry Clearance Officer and that in order to bring the Sponsor's income within the financial limits imposed by the Rules then that income must be addressed in a particular way and if it is in cash (as is the case here) then the documentary evidence must specify the net amount of cash that has been paid into the Sponsor's bank to be reflected within the bank statements. She acknowledges that the discrepancy that is paid in in this instant case is of a very small amount indeed and that the net weekly payments amount to £302.69 and that the bank statements disclose regular payments at cash points of a minimum of £302. She does however acknowledge that the Sponsor's evidence was found to be credible by the First-tier Tribunal Judge but still maintains on the Secretary of State's behalf that the decision contains a material error of law in virtue of the manner in which cash was included in the assessment.
7. Miss Azhar opposes the Secretary of State's appeal and submits that the Home Office are in fact wrong as the figure that the Appellant and his legal advisors made in their initial calculations was based on the net figures. She takes me to the statements showing the Appellant had a gross income of £18,899 i.e. a figure in excess of the statutory minimum requirement and she then makes appropriate deductions for annual income tax of £1,910. She submits that the error appears in the Home Office calculations to be that they have not factored in national insurance and that the

annual net figure once national insurance is deducted calculates down to the exact figure of the net weekly pay of £302.69. She submits that this paper trail shows such payments and that this evidence was known and available to the First-tier Tribunal Judge and was appropriately applied. She consequently submits there is no material error of law.

The Law

8. Areas of legislative interpretation, failure to follow binding authority or to distinguish it with adequate reasons, ignoring material considerations by taking into account immaterial considerations, reaching irrational conclusions on fact or evaluation or to give legally inadequate reasons for the decision and procedural unfairness, constitute errors of law.
9. It is not an arguable error of law for an Immigration Judge to give too little weight or too much weight to a factor, unless irrationality is alleged. Nor is it an error of law for an Immigration Judge to fail to deal with every factual issue of argument. Disagreement with an Immigration Judge's factual conclusion, his appraisal of the evidence or assessment of credibility, or his evaluation of risk does not give rise to an error of law. Unless an Immigration Judge's assessment of proportionality is arguable as being completely wrong, there is no error of law, nor is it an error of law for an Immigration Judge not to have regard to evidence of events arising after his decision or for him to have taken no account of evidence which was not before him. Rationality is a very high threshold and a conclusion is not irrational just because some alternative explanation has been rejected or can be said to be possible. Nor is it necessary to consider every possible alternative inference consistent with truthfulness because an Immigration Judge concludes that the story is untrue. If a point of evidence of significance has been ignored or misunderstood, that is a failure to take into account a material consideration.

Findings

10. Appendix FM 1(n) states:-

“The gross amount of any cash income may be counted where the person's specified bank statements show the net amount which relates to the gross amount shown on their payslips ... Otherwise only the net amount shown on the specified bank statements may be counted.”
11. It is the submission of the Secretary of State that the judge was not entitled therefore to count earnings paid in cash which had not been paid into a bank account. Whilst the judge may not have specifically made reference to this Rule it is clear from paragraph 49 that the judge has acknowledged that there are some payments made in cash and has shown the paper trail is followed and given full details of the Sponsor's income at paragraph 51. Had the Secretary of State factored in the national insurance contributions then it would have been clear that the figures balanced. In such circumstances the cash payments are fully explained within the terms of Appendix FM 1(n) and this is set out properly within the First-tier Tribunal Judge's

decision. The decision therefore discloses no material error of law and the appeal of the Secretary of State is dismissed and the decision of the First-tier Tribunal Judge is maintained.

Notice of Decision

The decision of the First-tier Tribunal discloses no material error of law and the Secretary of State's appeal is dismissed and the decision of the First-tier Tribunal Judge is maintained.

No anonymity direction is made.

Signed

Date

Deputy Upper Tribunal Judge D N Harris

TO THE RESPONDENT
FEE AWARD

No application is made for a fee award and none is made.

Signed

Date

Deputy Upper Tribunal Judge D N Harris