UPPER TRIBUNAL
(IMMIGRATION AND ASYLUM CHAMBER) **APPEAL NUMBER: OA/10492/2013**

THE IMMIGRATION ACTS

Heard at: Field House
On: 11 September 2014
Prepared: 2 October 2014

Determination Promulgated
On: 13 October 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE MAILER

Between

ENTRY CLEARANCE OFFICER

Appellant

and

MR SUNDAY CLEMENT TAKWI
(NO ANONYMITY DIRECTION MADE)

Respondent

Representation

For the Appellant: **Mr S Kandola, Senior Home Office Presenting Officer**
For the Respondent: **Mr V Onuegbu, (Ovo Solicitors)**

DETERMINATION AND REASONS

1. For the sake of convenience I shall refer to the appellant as "the entry clearance officer" and the respondent as "the claimant."

2. The claimant is a national of Cameroon, born on 12th February 1969. His appeal against the decision of the entry clearance officer dated 2nd April 2013 to refuse to grant him entry clearance to the UK as the spouse of his sponsor, Mrs Agnes Foumbi Takwi, was allowed under the Immigration Rules by First-tier Tribunal Judge Clayton in a determination promulgated on 9th June 2014.

3. In the reasons for refusal, the entry clearance officer noted that under the rules he needed to show his sponsor had a gross income of at least £18,600 per annum. He

had provided three payslips dated August, September and November 2012 and a Lloyds bank statement dated from 27th July 2012 until 26th September 2012.

4. Whilst acknowledging that he had provided some of the required evidence, he had failed to provide all the required specified documents relating to his sponsor's employment. Accordingly, he had not demonstrated that his sponsor had received the required financial income.

5. Furthermore, the claimant was not exempt from the English language requirement under paragraph E-ECP.4.2. He provided no evidence that he had undertaken a test from the UKBA's approved test providers. His application was accordingly also refused under ECP.1.1(d) of FM.

6. Judge Clayton found that the claimant had shown on the balance of probabilities that both he and the sponsor intended to live permanently with each other as spouses and that their marriage was subsisting [13].

7. Insofar as the financial requirements were concerned, she had had regard to the date of refusal, namely 2nd April 2014. The sponsor's P60 was up to the tax year ending 5th April 2013. It therefore covered the relevant period. It was not possible for this to be placed before the entry clearance officer as it would have been issued some weeks after the end of the tax year.

8. The Judge found that although the P60 was not before the entry clearance officer, it shed light on the situation "at the time." The claimant provided payslips for August, September and November 2012 and a bank statement for the period from the 27th July 2012 to the 26th September 2012. The P60 clarified the situation at the date of application, namely 4th February 2013. That she found was an admissible document. She therefore found that the sponsor fulfilled the financial requirements.

9. Insofar as the English language requirements are concerned, she accepted the sponsor's evidence that the specific facilities were not available in Cameroon for the claimant to undertake the test but immediately after refusal he was able to obtain an IELTS test report form. This showed an overall band score of 5.5. Accordingly, the Judge was satisfied on the balance of probabilities that, although not exempt from the English language requirement, the claimant's English was of a sufficient standard to meet the requirements of EC-P1.1 (d) of Appendix FM.

10. The appeal was allowed under the Immigration Rules and the Judge directed that settlement be granted forthwith. In addition, a full fee award was made.

11. On 21st July 2014, First-tier Tribunal Judge Colyer granted the entry clearance officer's application for permission to appeal. It was arguable that the Judge had paid insufficient regard to the comprehensive requirements set out in Appendix FM-SE; whereas the claimant had submitted some documentation this had not

satisfied the requirements of that Appendix and no adequate reasons for those findings had been given. In addition, the Judge had not had appropriate regard to the relevant date, namely the date of application.

12. Mr Kandola applied, without opposition, to include a further ground in the light of the Judge's finding at paragraph 15, that the English language requirements had been met. The English language test report was produced *after* the date of refusal. The entry clearance officer had in fact asserted that the failure to produce such a report constituted an additional ground of refusal. The evidence tendered was post-decision evidence and accordingly on that ground alone the application was bound to fail under the rules.

13. With regard to the financial requirements, although the claimant provided some payslips and bank statements, these did not cover the relevant period required under the rules, namely six months prior to the date of application. The requirement is set out in Appendix FM-SE which provides that wage slips must cover a period of six months prior to the date of application where the claimant has been employed by his current employer for at least six months.

14. Further, there must be a letter from the employer who issued the payslips, confirming his employment and gross annual salary; the length of his employment; the period over which he has been or was paid the level of salary relied upon in the application; and the type of employment (permanent, fixed term contract or agency). Moreover, there must be a signed contract of employment for the employment currently held and monthly personal bank statements corresponding to the same period as the wage slips showing that the salary has been paid into the account in the name of the person or in the name of the person and their partner jointly.

15. The First-tier Judge had referred to the production of only three payslips for August, September and November 2012. The claimant however needed to show payslips up until February 2013. As to the bank statements, the Judge referred to a bank statement from Lloyds between 27th July 2012 and 26th September 2012. There was however no money going into that statement and accordingly, they were not of a corroborative nature required in fulfilment of the financial requirements.

16. It is clear from Appendix FM-SE, dealing with evidence of financial requirements under Appendix FM, that in respect of salaried employment in the UK, all the evidence specified in paragraph 2 "must be provided." That includes the P60 for the relevant period, if issued. However, the other documents such as wage slips, letters from the employer, a signed contract and the personal monthly bank statements corresponding to the same periods as the wage slips must be produced.

17. Accordingly, the P60 submitted was not sufficient. Nor had the other relevant documentation required been provided and no reason given to explain why such documentation had not, or could not have been provided.

18. Insofar as Article 8 is concerned the claimant cannot meet the rules which constitutes a "weighty factor" to be taken into account. He submitted that the remedy is to make a further application in compliance with the rules and appendices.

19. On behalf of the claimant, Mr Onuegbu submitted that the "decision was open to the Judge." It was based on the available evidence. The P60 was sufficient evidence in the circumstances. The P60 deals with all the relevant circumstances raised in the rules and Appendix FM-SE. The P60 produced related to the tax year up to 5th April 2013. In other words, from 31st March 2012, the sponsor was in employment. Accordingly the six months requirement with regard to other documents was "misconceived." He also submitted that a P60 can constitute a letter from the employer. He submitted that "Appendix FM-SE is an overkill."

20. Accordingly, the P60 is conclusive of everything required by Appendix FM-SE and the Judge was entitled to rely pursuant to her discretion under s.85(4) of the 2002 Act that as at the date of the application the claimant had satisfied the requirements. Accordingly, the entry clearance officer's submissions amount to a "mere disagreement" with the findings of the Judge.

21. He also submitted that pursuant to paragraph 1(k) of Appendix FM-SE, the entry clearance officer should normally refuse an application which does not provide the evidence specified in the appendix. However, where documents have been submitted, but not as specified, and the entry clearance officer considers that, if the specified documents were submitted, it would result in a grant of leave, he should contact the applicant or representative in writing, or otherwise, to request that such documents be submitted within a reasonable time frame. Examples of such documents submitted not as specified include: a document missing from a series, e.g. a bank statement; a document in the wrong format; or a document that is a copy rather than the original. He submitted that the claimant should have been given an appropriate opportunity in the circumstances.

22. With regard to the English language test, there had been no test centre established in Cameroon, but merely in Ghana. Accordingly, the claimant was exempted from meeting the requirement under the rule.

23. Mr Kandola in reply submitted that pursuant to paragraph 281(ii) of the rules, one of the requirements to be met by a person seeking leave to enter with a view to settlement as the spouse is that he provides an original English language test certificate in speaking and listening from an English language test provider approved by the Secretary of State for these purposes. There are "exemptions." For

example, if the claimant is aged 65 or over at the time he makes his application; or the claimant has a physical or mental condition preventing his meeting that requirement; or there are exceptional circumstances that would prevent the claimant from meeting the requirements, or he is a national of one of the countries specified.

24. Cameroon is not such a country. Nor has the claimant obtained an academic qualification seen by UK NARIC to meet the recognised standard of a bachelors or Masters degree or PhD in the UK.

25. Further, Mr Kandola referred to the claimant's application form and in particular questions 73 and 74 relating to the English language requirement. The claimant was asked whether he was exempt from the English language requirement to which he replied "no." He was then asked to provide details of how he met the English language requirement to which he answered "I come from English speaking part of Cameroon." Accordingly, Mr Kandola submitted that even the claimant himself had not claimed to be entitled to any exemption.

26. Mr Kandola submitted that given that the documents were not even produced before the Judge, even assuming that an opportunity should have been given to the claimant under paragraph 1(k) of Appendix FM-SE, this would not have resulted in a grant of leave.

27. Furthermore, the English language test was in any event taken almost a year after the date of the decision in this case. Mr Kandola submitted that new evidence was not able to be led in this case having regard to the provisions of s.85A(2) of the Nationality, Immigration and Asylum Act 2002: the immigration decision appealed against, namely an entry clearance application, was "of a kind specified in s.82(2)(b)" where the Tribunal may consider only the circumstances appertaining at the time of the decision.

Assessment

28. The claimant failed to provide the required specified evidence showing his sponsor's income from employment. That included the full six months' payslips and corresponding bank statements as well as a letter from his employer containing the required information.

29. The First-tier Tribunal Judge was aware that the claimant had not provided all the payslips required or a bank statement showing the corresponding payments into the account from earnings. She however admitted the P60, finding it to be "an admissible document." It had not been possible for this to be placed before the entry clearance officer as it was only issued some weeks after the end of the tax year.

30. It is a requirement in any event under Appendix FM-SE that the P60 for the relevant period of employment relied on, if issued, must be submitted. However, it is also clear from paragraph 2 that all the evidence identified in the Appendix relating to salaried employment must be produced. Such evidence however was not produced.

31. I reject the submission that the P60 can act as some kind of substituting document containing all the information required. It is simply one of several documents that must be provided. The relevant paragraph does not excuse the production of all the other evidence required in sub-paragraph (c) to (f). If the P60 alone would have sufficed, that would have been expressly stated in the paragraph.

32. The claimant himself accepted in his application that he was not exempt from complying with the English language test requirements. I find that the Judge wrongly admitted evidence relating to the claimant's IELTS report for the reasons already referred to.

33. Finally, I do not find that the entry clearance officer was in the circumstances obliged to contact the claimant in writing to request that the specified documents be submitted.

34. I accordingly find that the claimant had not produced the evidence required to be produced and which has been comprehensively set out in Appendix FM-SE to the immigration rules.

35. Nor did the documents which he did supply cover the relevant period as required under the rules. Nor had the Tribunal addressed the relevant evidence from prior to 7th February 2013, which was the date of application.

Decisions

I set aside the determination of the First-tier Tribunal Judge and re- make the decision, dismissing the claimant's appeal.

I set aside the direction given by the Judge that entry clearance be granted forthwith.

I set aside the fee award that was made.

Signed Date 2/10/2014

C R Mailer
Deputy Upper Tribunal Judge