



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/08288/2015
HU/08292/2015
HU/08293/2015

THE IMMIGRATION ACTS

Heard at Field House
On 10 July 2017

Decision & Reasons Promulgated
On 11 July 2017

Before

DEPUTY UPPER TRIBUNAL JUDGE SAFFER

Between

SEEMA MOHAMMED TAQI
FAIZA LATIF JALALI
SADIGH LATIF JALALI
(NO ANONYMITY ORDER MADE)

Appellant

and

ENTRY CLEARANCE OFFICER - ISLAMABAD

Respondent

Representation:

For the Appellant: Miss Imamovic of Counsel

For the Respondent: Mr Whitwell a Senior Home Office Presenting Officer

DECISION AND REASONS

Background

1. The Respondent refused the Appellants' applications for leave to enter as a spouse and dependent children on 1 September 2015. The appeal against that was

dismissed by First-tier Tribunal Judge Sangha (“the Judge”) following a hearing on 28 October 2016.

2. Upper Tribunal Judge McWilliam granted permission to appeal (11 May 2017). She said it is arguable that the Judge erred in concluding at [22] that the Appellant cannot meet the substantive requirements of the rules, and that this infected the article 8 assessment even though it was accepted that she could not meet the evidential requirements.
3. It is of note that the key issue related to the Sponsor’s employment at Kelly’s, and what income could be relied on from that. I will therefore focus purely on that.

The Judgement

4. The Judge records [10];

“With regard to the letter from Kelly’s at page 27 (a) Miss Imamovic agreed that it did not contain all the details required under the Rules but submitted that I could rely on other evidence in the Appellants bundle to satisfy that the Appellants met the financial threshold.

[20] I have been provided with a letter from Kelly’s News dated 15 October 2015 which confirms that the Sponsor’s annual salary is £6,552 gross and that he started work there on 1 March 2014 and that he was paid his salary from 15 March 2014 and that he is employed by them as a sales assistant on a permanent part time basis. I satisfied that the letter meets the requirements of the Rules...”

[25] The HMRC tax calculation for the tax year 2014/15...clearly shows that for that period the Sponsor’s total earnings were £22,717. If that is correct that clearly shows that the Appellants do not meet the financial threshold under the Rules as they are required to show a gross income of at least £24,800 per annum.”

Discussion

5. The key point, as submitted by Miss Imamovic, was that the HMRC letter does not accurately reflect the income or payslips as the tax year date cut across the employment at Kelly’s, and in fact the payslips showed that his total income was £26,919 when the full 6 month period was considered and not just the 1 month that fell within that particular tax year. The “concession” was not a concession of the fact of employment or income as it is clear that it was said that other evidence filled the “gap”.
6. Mr Whitwell did not challenge Miss Imamovic’s key point regarding how the calculation was to be made.
7. I agree with Miss Imamovic’s unchallenged assessment of the legal position. I am therefore satisfied that the Judge did materially err in relation to the income from

Kelly's. It should have been considered over the full 6 months and not just the 1 month referred to in the HMRC letter. The Judge therefore materially erred.

8. Having heard submissions, I agreed that it was appropriate to rehear the matter. Both representatives agreed that I should allow the appeal as the Kelly's income when properly assessed plainly took the Sponsor's income over the relevant threshold, and was supported by the appropriate specified evidence.
9. As the Sponsor met the relevant income threshold, the rules were met in full. There is no legitimate aim in separating the family when all the rules are met. There could be adverse consequences in separating a family given the low threshold. It was therefore a disproportionate interference in the respect they were entitled to with regards their family life to require them to reapply. I allow the appeal on human rights grounds, that being the only ground available to the family.

Decision:

The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.

I set aside the decision.

I remake the decision and allow the appeals.

Deputy Upper Tribunal Judge Saffer
10 July 2017