Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/11225/2018

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 14th June 2019	**On 01 July 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE DAVIDGE

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MR JOHN OBOUR
(ANONYMITY DIRECTION NOT MADE)

Respondent

Representation:
For the Appellant: Mr L Tarlow
For the Respondent: Mr P Apraku of Adam Bernard solicitors

DECISION AND REASONS

1. The court makes no order in respect of anonymity. The Secretary of State appeals the decision of First-tier Tribunal Judge EMM Smith promulgated on 9th April 2019 whereby he allowed the appeal against the decision to refuse to grant entry clearance as a spouse.

2. For convenience I refer to the parties as they were known at the First-tier Tribunal.

3. Permission to appeal was granted at the First-tier Tribunal by Designated Judge Woodcraft on 08th May 2019 on the basis that it was arguable that the First-tier Tribunal Judge, who dealt with the matter on the papers, had procedurally erred by taking into account documents which had not been served on the respondent.

4. Turning to the Grounds of Appeal the first point taken against the decision is that the judge concluded that the financial requirements of the spouse rules at appendix FM were met w, failing to refer or make findings on the details of the required "specified evidence", in particular the judge does not refer to having seen 6 months' payslips, or evidence showing that salary exceeding £21,000 had been paid prior to February 2018.

5. There is no merit in this ground which failed to recognise that the judge is required to give reasoning adequate to the dispute on the evidence. The reasons for refusal make plain that the entry clearance officer had seen 6 months' payslips, so that this was not in issue. The reasons for refusal letter, as acknowledged by Mr Tarlow before me, shows that the only dispute in respect of the specified financial evidence was that the letter submitted to meet the requirement of an employer's letter dated within 28 days of the application submitted in January 2018, was undated. The judge correctly identified that issue. The judge noted that the letter from the employer submitted with the appeal confirmed her employment as having been continual from 1 July 2007. The judge reached a conclusion that was open on the evidence when finding on the assertion of the respondent, who I note had failed to comply with the direction to include in the bundle the evidence upon which they relied: which in this case would have been the letter complained about, that in all probability there had been a failure in respect of the specified evidence submitted with the application in that the letter probably was undated, but that the evidence was sufficient to show the substance of the financial threshold requirements of the rules were met at least as at the date of hearing. Before me Mr Tarlow accepted that that was the position. Additionally, contrary to the respondent ECO's point that the appellant had failed to provide appendix 2 of the application, it was plainly on the ECO's file as the copy provided to the Tribunal by the ECO showed, so that the issue of the employer's letter was the only relevant dispute.

6. The next point in the grounds relates to the procedure adopted by the judge. It is said that the judge proceeded to deal with the case on the papers when the respondent had requested that the appeal remained listed for an oral hearing. Before me Mr Tarlow indicated that he was unable to proceed with that criticism because there was no evidence that the respondent had made any such request. The grounds assert that the judge proceeded to deal with the appeal on a bundle which had not been served on the respondent. The relevant point here is that the letter from the employer referred to above was included in that bundle but not seen by the respondent. The appellant's representative before me insisted that the document had in fact been served on the respondent as per the correspondence dated 04 April 2019 confirming that it was served on the respondent POU office in Birmingham by fax.

7. In the event the dispute fell away when Mr Tarlow took no issue with the appellant's representative's point on service, and, having had an opportunity to review the bundle, acknowledged that on the face of the reasons for refusal letter not only was the evidence of the undated letter from the employer, 6 months' wages slips, P 60's and bank statements before the entry clearance officer sufficient to show on balance that the substance of the rules were met, it was an appropriate case for the entry clearance officer to take the discretionary route available under the rules for clarification of the specified evidence, and the failure to exercise that discretion in favour of the appellant could not be explained. In those circumstances Mr Tarlow concurred that in the event that I found contrary to the appellant's representative, the bundle had not been served, so that there was a procedural error, in terms of materiality there was little that could be advanced because in any remaking of the decision the evidence on its face established that the decision to allow the appeal on human rights grounds as a disproportionate interference was open because on the evidence relevant to the dispute I would be entitled to conclude the substance of the rules were probably met at the date of the decision as well as hearing.

8. I find the evidence of the correspondence shows that the appellant's representative probably did serve the bundle on the respondent. Had I concluded otherwise I would have remade the decision allowing the appeal for the reasons identified above.

9. I find no error of law established and the decision of the First-tier Tribunal allowing the Appellant's appeal stands.

10. I have dismissed the appeal and therefore there can be no fee award.

Signed  Date 25 June 2019

Deputy Upper Tribunal Judge Davidge