



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/12572/2018

THE IMMIGRATION ACTS

Heard at Field House
On 25 June 2019

Decision & Reasons Promulgated
On 12 July 2019

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAPMAN

Between

MR HARDEEP SINGH
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Raza, Twinwood Law Practice Ltd.

For the Respondent: Ms Jones, Home Office Presenting Officer

DECISION AND REASONS

1. This is the appeal of Mr Hardeep Singh, a national of India born on 15 March 1982. His appeal came before the Upper Tribunal for an error of law hearing on 3 May 2019. In a decision and reasons promulgated on 20 May 2019, I found an error of law in the decision of the First-tier Tribunal and adjourned the appeal for a resumed hearing with directions that the appeal be confined to consideration of whether or not the financial requirements of the Immigration Rules and Appendix FM-SE were met.

Hearing

2. At the hearing before the Upper Tribunal, Mr Raza on behalf of the Appellant submitted a skeleton argument and also printouts from the Sponsor's savings account. In respect of the current balance, the Santander account showed a current balance of £4,969.76 and the Barclay's ISA account showed a balance of £10,124.53.
3. The Sponsor gave evidence and adopted her statement signed by her and dated 28 June 2019, in which she refers to the fact that she has changed employment and now works for SSV Logistics Limited as an administrator receiving a monthly gross salary of £1,650.00 which is paid directly into her bank account. She was cross-examined by Ms Jones on behalf of the Secretary of State. I then heard submissions from both parties as to the ability of the Sponsor to meet the Rules.

Findings and Reasons

4. It was ultimately agreed by the parties that the material Rule was Appendix FM-SE(n). This provides as follows:
 - “(m) Cash income on which the correct tax has been paid may be counted as income under this Appendix, subject to the relevant evidential requirements of this Appendix.*
 - “(n) 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 pay slips (or in the relevant specified evidence provided in addition to the specified bank statements in relation to non-employment income). Otherwise only the net amount shown on the specified bank statements may be counted.”*
5. Ms Jones submitted that the requirements of Appendix FM-SE were not met, thus the Appellant was unable to meet the financial requirement of the Rules and consequently the appeal fell to be dismissed. She drew attention to the fact that the schedule of income which had been prepared by the Appellant's solicitors at page 16 of the updated bundle was inaccurate, in that it was claimed in respect of November 2018 that £1,350.00 had been deposited, but this was not reflected by the bank statement relating to that time period and the Sponsor's evidence was that she had gone to India that month and that her employers had instead provided her with £1,200.00 in cash which she had taken with her in order to help support her father-in-law in India who was ill at that time.
6. The second discrepancy relates to March 2019 where the Appellant's income for that month was £1,200.04. However it was claimed in the schedule that £1,400.00 was deposited whereas the bank statements and the pay slips show instead that £1,200.04 was deposited. Thus the schedule of income is incorrect.
7. Ms Jones also drew attention to the fact that, in relation to the Appellant's new employment, pay slips in respect of which are set out at pages 22 and 23, the taxable gross pay does not seem to reflect the amounts that the Appellant has actually been paid, i.e. for the first working month of March 2019 the Appellant was paid £1,200.04,

but her taxable gross pay was £1,350.00. The following month in April 2019 she was paid £1,416.00, her total payment being £1,650.00, but for May's pay slip her total payment was £1,575.00, but her taxable gross pay was £3,225.00. However it seems in respect of this calculation that the taxable gross pay has been calculated from the beginning of April thus I do not consider that that is discrepant, having looked at the figures that have been provided.

8. In his submissions, Mr Raza accepted ultimately that the requirements of Appendix FM-SE were not strictly complied with, but in substance the requirements of the Rules in terms of the minimum income requirement are met, particularly when one takes into account the Sponsor's savings. Mr Raza submitted that the relevant period began on 5 June 2018, when the Sponsor had her previous employment. Evidence of that is at page 17 onwards of the bundle and it ends with the pay slips at page 23, ending on 31 May 2019. He submitted that the gross total for that period amounts to £19,425.00 taken from the pay slips. In respect of the Sponsor's previous employment with PR Distributions Limited, he accepted that there was no deposit of salary in November 2018 and thus there was a small shortfall based on the pay slips. Mr Raza submitted that subparagraph (n) of Appendix FM-SE is discretionary. The pay slips for PR Distributions show that the Sponsor was paid in cash, that there was no dispute that this employment was genuine and the reason for the shortfall was the Sponsor's visit to India in November 2018. He invited the Upper Tribunal to read the Immigration Rules in conjunction with the judgment of the Supreme Court in *MM (Lebanon)* [2017] UKSC 10 at [99] to [100] cited in his skeleton argument and which provides as follows:

- "99. Operation of the same restrictive approach outside the rules is a different matter and in our view is much more difficult to justify under the HRA. This is not because 'less intrusive' methods might be devised (as Blake J attempted to do: para 147), but because it is inconsistent with the character of evaluation which article 8 requires. As has been seen, avoiding a financial burden on the state can be relevant to the fair balance required by the article. But that judgment cannot properly be constrained by a rigid restriction in the rules. Certainly, nothing that is said in the instructions to case officers can prevent the tribunal on appeal from looking at the matter more broadly. These are not matters of policy on which special weight has to be accorded to the judgment of the Secretary of State. There is nothing to prevent the tribunal, in the context of the HRA appeal, from judging for itself the reliability of any alternative sources of finance in the light of the evidence before it. In doing so, it will no doubt take account of such considerations as those discussed by Lord Brown and Lord Kerr in Mahad, including the difficulties of proof highlighted in the quotation from Collins J. That being the position before the tribunal, it would make little sense for decision-makers at the earlier stages to be forced to take a narrower approach which they might be unable to defend on appeal.*
- 100. As already explained, we do not see this as an issue going to the legality of the rules as such. What is necessary is that the guidance to officers should make clear that, where the circumstances give rise to a positive article 8*

duty in the sense explained in Jeunesse, a broader approach may be required in drawing the 'fair balance' required by the Strasbourg court. They are entitled to take account of the Secretary of State's policy objectives, but in judging whether they are met, they are not precluded from taking account of other reliable sources of earnings or finance. It is open to the Secretary of State to indicate criteria by which reliability of such sources may be judged, but not to exclude them altogether."

Decision

9. I have concluded in light of the evidence and the submissions of both parties, that the Sponsor is not able to meet the specific requirements of Appendix FM-SE due to her visit to India in November 2018 and the absence of her salary being deposited that month. However, following the judgment of the Supreme Court in *MM (Lebanon)* when one looks at the matter in the round and in particular take account not only of the Sponsor's payslips but also her Barclay's ISA account and the Santander savings account, that the minimum income requirement of the Rules is met. It follows that the appeal falls to be allowed *cf. TZ (Pakistan)* [2018] EWCA Civ 1109 at [34], that being the only issue that was in contention before the Upper Tribunal.

Signed *Rebecca Chapman*

Date 8 July 2019

Deputy Upper Tribunal Judge Chapman
Name: DUTJ Chapman