

THE IMMIGRATION ACTS

Heard at Hatton Cross
On 6th August 2009
Prepared 6th August 2009

Determination Promulgated
..... - 6 AUG 2009

Before

IMMIGRATION JUDGE NIGHTINGALE

Between



Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation

For the appellant:

For the respondent: None

DETERMINATION AND REASONS

1. The appellant is a citizen of Australia born on 1975. She appeals the decision of the respondent dated 17th June 2009 refusing to vary her leave to remain in the United Kingdom as a Tier One (General) Migrant. The decision cites paragraph 245C(c) HC395 as the reason for refusal. The appellant had failed to obtain 75 point under Appendix A. Her application was made on 29th May 2009.
2. The respondent's reasons, in summary, are that the appellant had not provided evidence from two different sources that established her twelve months earnings. She had produced original payslips and an employer's letter, which were the same source, but no original bank statements for the period 1st May 2008 to 1st May 2009
3. The appellant lodged an appeal against this decision on 1st July 2009. The grounds of appeal state, in summary, that the decision is not in accordance with the law or the immigration rules. The appellant had original bank statements available for the periods of time in question and her gross earnings were as claimed. She met the terms of the rules for the awarding of the claimed points.

4. The respondent was unable to provide a representative for the appeal hearing and sent instead a copy of 'Home Office Submissions (Non-Asylum Appeals)' to which I have had regard so far as they were relevant to the issues before me.

The Evidence

5. I have before me, and have taken into account, the respondent's bundle and the appellant's grounds of appeal and bundle running to some 63 pages. In addition I was provided with the appellant's original bank statements. I viewed the original bank statements.
6. The appellant adopted her witness statement and I did not need to hear any further oral evidence from the appellant.
7. I did not need to hear from . I indicated that this appeal would be allowed with reasons to follow.

Applicable Law

8. The burden is on the appellant to establish that she meets the requirements of the substantive immigration rules. She must do so on the balance of probabilities. So far as it is relevant to the issue before me, paragraph 354C(c) HC395 provides as follows:

245C. Requirements for entry clearance or leave to remain

To qualify for leave to remain as a Tier 1 (General) Migrant, an applicant must meet the requirements listed below. If the applicant meets these requirements, entry clearance or leave to remain will be granted. If the applicant does not meet these requirements, the application will be refused.

Requirements:

(c) The applicant must have minimum of 75 points under paragraphs 1 to 31 of Appendix A.

9. So far as is relevant to the issue before me, Appendix A provides as follows for the awarding of points:

Table 2

Previous earnings	Points
£16,000-£17,999	5
£18,000-£19,999	10
£20,000-£22,999	15
£23,000-£25,999	20

£26,000-£28,999	25
£29,000-£31,999	30
£32,000-£34,999	35
£35,000-£39,999	40
£40,000 or more	45

Previous earnings: notes

8. Specified documents must be provided as evidence of previous earnings.

Period for assessment

9. Applicants should indicate in the application for which 12-month period their earnings should be assessed.

10. (a) For all applicants (except those referred to at paragraph 11 below) the period for assessment of earnings must:

- (i) consist of no more than 12 months which must run consecutively, and
- (ii) fall within the 15 months immediately preceding the application.

Earnings

13. Earnings include, but are not limited to:

- (a) salaries (includes full-time, part-time and bonuses),

14. Where the earnings take the form of a salary or wages, they will be assessed before tax (i.e. gross salary).

UK Experience: notes

24. If an applicant has, or last had, leave as a Highly Skilled Migrant or a Tier 1 (General) Migrant, and is applying for leave to remain, points for UK experience will only be awarded for previous earnings earned in the UK (and not qualifications obtained in the UK).

29. The qualification for which UK experience points are claimed can be, but does not have to be, the same as the qualification for which points are claimed under table 1.

Findings

10. Two sources of evidence are referred to as a requirement in the applicable guidance and I accept that payslips and bank statements amount to two separate sources within the terms of the guidance. Section 85(4) of the NIAA 2002 permits me to consider any evidence relevant to the substance of this decision which is before me and I do so.
11. The payslips submitted with this application are not in issue and have been accepted to provide one specified source of evidence. I have before me original bank statements running from 1st May 2008 to 1st May 2009 from the appellant's Lloyds TBS current account. The monthly salary payments into that account fully accord with the payslips on each of the twelve months claimed for. I am fully satisfied on the basis of this evidence that the appellant has established on balance that her earnings in the twelve months claimed for this application are as stated by her. I find that she has established this from two separate sources as provided for in the applicable guidance. It follows that I find her to be entitled to the points as claimed for previous earnings and also to the five points claimed for UK experience on the basis of her earnings. I find that she scores in excess of the required seventy-five points under appendix A. I find that the requirements of paragraph 245C(c) HC395 are met on balance on the evidence before me.

Decision

20. The appeal is allowed under the immigration rules.

Signed

Date: 6th August 2009

Immigration Judge Nightingale

