



Home Office

Web www.gov.uk/ukvi

Our Ref [REDACTED]

Date 24 Jun 2019

Dear [REDACTED]

Your human rights claim in an application for entry clearance made on 14/02/2019 is refused.

What this means for you

You can appeal this decision. Instructions on how to appeal are in the 'next steps' section of this letter.

The reasons for this decision are set out on the next page.

Yours sincerely,

MW / ECO
Sheffield Visa Section

REASONS FOR REFUSAL

ROA

On 14/02/2019 you made an application for entry clearance to the UK under Appendix FM to the Immigration Rules on the basis of your family life with your partner [REDACTED]

Your application has been considered under those Rules, and with reference to Article 8 of the European Convention on Human Rights (ECHR). The relevant Immigration Rules can be viewed on gov.uk here: www.gov.uk/guidance/immigration-rules.

This decision takes into account as a primary consideration the best interests of any relevant child in line with section 55 of the Borders, Citizenship and Immigration Act 2009.

We have considered your application under paragraph EC-P.1.1. of Appendix FM. However, you do not qualify for entry clearance under the 5-year partner route for the following reasons:

Suitability

Your application does not fall for refusal on grounds of suitability under Section S-EC of Appendix FM.

Eligibility

Under paragraph EC-P.1.1.(d) you do not meet all of the eligibility requirements of Section E-ECP of Appendix FM for the following reasons:

Eligibility Relationship Requirement

You meet the eligibility relationship requirement of paragraphs E-ECP.2.1. to 2.10.

Eligibility Financial Requirement

You do not meet the eligibility financial requirement of paragraphs E-ECP.3.1. to 3.4. because:

You have stated in your Visa Application Form that you meet the financial requirement through Category A. I am not able to take into account any potential employment you have available to you in the UK or any offers of financial support from third parties. In order to meet the financial requirements of Appendix FM your sponsor needs a gross income of at least £18,600 per annum. You state that your sponsor is employed by [REDACTED] Ltd since 30/11/2015 and earns an annual salary of [REDACTED]. As evidence of your sponsor's employment you have submitted an employment letter and 6 months' payslips, but no bank statements to confirm salary deposits as specified in Appendix FM-SE.

Open source checks were conducted through Companies House on this company and this highlighted that your sponsor may be related to his employers.

Further enrichment was then carried out in the form of an employment interview. You sponsor was asked whether he was related to the Director to which he responded 'Yes, we have 2 Directors. I am actually related to 1 of them'. During the interview there were also other references made to the employment being 'family owned' and [REDACTED] stated that it is a family tradition to know all the jobs necessary for the work and that your sponsor was in fact recruited as he is a family member.

To further confirm this, we emailed you on 17/06/2019 to ask for further clarification regarding the relation between your sponsor and his employers and you responded:

[REDACTED], my husband is a 3 generation member of the family. He's grandfather [REDACTED] is the current [REDACTED] and father [REDACTED] is the [REDACTED]. Whilst he's uncle [REDACTED] is the [REDACTED].

[REDACTED] is named as the sole person with significant control holding between [REDACTED] and [REDACTED], of the shares.

In light of the above, in order to meet the financial requirement of Appendix FM-SE paragraph 9, your sponsor would need to be assessed for his employment as a specified type of Limited company.

The specified type of limited company is one in which:

- (i) the person is either a director or employee of the company, or both, or of another company within the same group; and
- (ii) shares are held (directly or indirectly) by the person, their partner or the following family members of the person or their partner: parent, grandparent, child, stepchild, grandchild, brother, sister, uncle, aunt, nephew, niece or first cousin; and
- (iii) any remaining shares are held (directly or indirectly) by fewer than five other persons.

and so all of the following must be provided:

- (i) Company Tax Return CT600 (a copy or print-out) for the last full financial year and evidence this has been filed with HMRC, such as electronic or written acknowledgment from HMRC.
- (ii) Evidence of registration with the Registrar of Companies at Companies House.
- (iii) If the company is required to produce annual audited accounts, such accounts for the last full financial year.
- (iv) If the company is not required to produce annual audited accounts, unaudited accounts for the last full financial year and an accountant's certificate of confirmation, from an accountant who is a member of a UK Recognized Supervisory Body (as defined in the Companies Act 2006) or who is a member of the Institute of Financial Accountants.

(v) Corporate/business bank statements covering the same 12-month period as the Company Tax Return CT600.

(vi) A current Appointment Report from Companies House.

(vii) One of the following documents must also be provided:

(1) A certificate of VAT registration and the VAT return for the last full financial year (a copy or print-out) confirming the VAT registration number, if turnover is in excess of £79,000 or was in excess of the threshold which applied during the last full financial year.

(2) Proof of ownership or lease of business premises.

(3) Proof of registration with HMRC as an employer for the purposes of PAYE and National Insurance, proof of PAYE reference number and Accounts Office reference number. This evidence may be in the form of a certified copy of the documentation issued by HMRC.

(c) Where the person is either listed as a director of the company, or is an employee of the company, or both, and receives a salary from the company, all of the following documents must also be provided:

(i) Payslips and P60 (if issued) covering the same period as the Company Tax Return CT600.

(ii) Personal bank statements covering the same 12-month period as the Company Tax Return CT600 showing that the salary as a director or employee of the company (or both) was paid into an account in the name of the person or in the name of the person and their partner jointly.

(d) Where the person receives dividends from the company, all of the following documents must also be provided:

(i) Dividend vouchers for all dividends declared in favour of the person during or in respect of the period covered by the Company Tax Return CT600 showing the company's and the person's details with the person's net dividend amount.

(ii) Personal bank statement(s) showing that those dividends were paid into an account in the name of the person or in the name of the person and their partner jointly.

(e) For the purposes of paragraph 19(a), evidence of ongoing employment as a director or other employee of the company or of ongoing receipt of dividend income from the company must be provided. This evidence may include payslips (or dividend vouchers) and personal bank statements showing that, in the period since the latest 12-month period covered by the Company Tax Return CT600, the person's salary as a director or employee of the company (or both) (or dividend income from the company) was paid into an account in the name of the person or in the name of the person and their partner jointly. Alternative evidence may include evidence of ongoing payment of business rates, business-related insurance premiums or employer National Insurance contributions in relation to the company.

Your sponsor has not provided the required specified evidence in line with the above. Given the quantity of documents missing from your application I have deemed that it is not appropriate to apply evidential flexibility.

You have therefore failed to provide the required documents relating to your sponsor's employment. These documents are specified in the Immigration Rules in Appendix FM-SE and must be provided. I therefore refuse your application under paragraph EC-P.1.1(d) of Appendix FM of the Immigration Rules. (E-ECP.3.1)

Eligibility English Language Requirement

You meet the eligibility English language requirement of paragraphs E-ECP.4.1. to 4.2.

Exceptional Circumstances

We have considered, under paragraphs GEN.3.1. and GEN.3.2. of Appendix FM as applicable, whether there are exceptional circumstances in your case which could or would render refusal a breach of Article 8 of the ECHR because it could or would result in unjustifiably harsh consequences for you or your family. In so doing we have taken into account, under paragraph GEN.3.3. of Appendix FM, the best interests of any relevant child as a primary consideration.

You have provided no information or evidence to establish that there are any exceptional circumstances in your case.

Refusal under the Partner Rules

In light of the above, your application is refused under paragraph D-ECP.1.3.of Appendix FM with reference to paragraph EC-P.1.1. (d) and you do not qualify for entry clearance on the 5-year partner route, or on the 10-year partner route on the basis of exceptional circumstances, under Appendix FM.

NEXT STEPS

ROA

RIGHT OF APPEAL

You have 28 days from the date you receive this decision to appeal. Information on how to appeal, the appeal process and the fees payable are all available online at:

<https://www.gov.uk/immigration-asylum-tribunal/appeal-from-outside-the-uk>

If you want to seek legal advice you must do so now.

IMMIGRATION HEALTH SURCHARGE

If you have paid the Immigration Health Surcharge it will be refunded. You may need to pay again if any appeal is successful.

<https://www.homeofficesurveys.homeoffice.gov.uk/s/visasurveyuk>

