



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: OA/02475/2013

**THE IMMIGRATION ACTS**

Heard at Birmingham Sheldon Court  
On 25<sup>th</sup> September 2014

Determination Promulgated  
On 02<sup>nd</sup> October 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

MRS TRAHEEM IRSHAD  
(ANONYMITY ORDER NOT MADE)

Appellant

and

ENTRY CLEARANCE OFFICER, ISLAMABAD

Respondent

**Representation:**

For the Appellant: Mr J. Howard (Solicitor)  
For the Respondent: Mr N. Smart (Home Office Presenting Officer)

**DETERMINATION AND REASONS**

1. This is an appeal against a determination of First-tier Tribunal Judge Hawden-Beal, promulgated on 28<sup>th</sup> March 2014, following a hearing at Birmingham on 21<sup>st</sup> March 2014. In the determination, the judge allowed the appeal of Mrs Traheem Irshad.

The Respondent Entry Clearance Officer, subsequently applied for, and was granted permission to appeal to the Upper Tribunal, and thus the matter comes before me.

### **The Appellant**

2. The Appellant is a female, a citizen of Pakistan, who was born on 10<sup>th</sup> May 1982. She is the spouse of Mr Saeed Nazir, a British citizen, present and settled in the UK. She appeals against the refusal of entry clearance, under Appendix FM (Section EC-P1.1(d), and E-ECP3.1) and Appendix FM-SE of HC 395.

### **The Judge's Findings**

3. The judge heard oral evidence from the Sponsor, Saeed Nazir, that he was paid in cash for jobs that he was doing, and he deposited a sufficient amount in his bank accounts only so as to be able to pay his direct debits, and then kept the rest to pay for his bills and to buy food. The judge was satisfied that the Appellant met the requisite threshold of earnings of £18,600 per annum as required by the Immigration Rules. The appeal was allowed.

### **Grounds of Application**

4. The grounds of application state that the judge erred in law because he failed to specify exactly the time when the Sponsor was said to be earning in excess of £8,600. Further, the evidence, such as it was, was not presented in the specified format.

### **The Hearing**

5. At the hearing before me, Mr Howard appearing as solicitor on behalf of the Appellant submitted that he had an application to make to withdraw the appeal of the Appellant. He submitted that the Sponsor was no longer in a relationship with the Appellant and therefore he did not now wish to sponsor the Appellant's entry into the UK. Mr Smart, appearing on behalf of the Entry Clearance Officer, submitted that he did not in principle oppose this, although the legality of this course of action was something that should be considered, as it was the Entry Clearance Officer's appeal, and not the appeal of the Appellant herself.
6. I have concluded that Mr Smart, on behalf of the Entry Clearance Officer, is correct in his submissions. I must first consider the appeal, as presented by the Entry Clearance Officer, and only if I find there to be an error of law, and I am then to remake the decision, that I should consider the application of Mr Howard to withdraw his appeal.
7. Having considered the appeal of the Entry Clearance Officer, I am satisfied that the judge, in making findings of fact at paragraphs 19 and 20, failed to have regard to the provisions of Appendix FM-SE, which requires specified evidence to be provided for a period of time before the date of the application. It has not been stipulated in the determination what the date of the application is, or the period of time which was

covered by the letter from HMRC, relied upon by the Sponsor. Accordingly, there is clearly an error of law, and I so find.

**Decision on the Appellant's Application to Withdraw the Appeal**

8. The application to withdraw in this case, is not that of the Appellant, Mrs Traheem Irshad, but of the Sponsor, Mr Saeed Nazir. As such, it is not open to the Sponsor to withdraw the appeal. Under Rule 17 of the Upper Tribunal Rules, for a party to withdraw its case before the Upper Tribunal, the consent of the Tribunal is required. The Upper Tribunal does not consent to the withdrawal of the appeal by the Appellant because the application is not by the Appellant, but by the Sponsor, Mr Saeed Nazir.
9. Accordingly, I proceed to determine the appeal substantively.

**Remaking the Decision**

10. I have remade the decision on the basis of the findings of the original judge, the evidence before him, and the submissions I have heard today. Having set aside the decision, I remake the decision now under Section 12(2) of TCEA 2007. Given that there is no evidence before me about the period of time before the date of the application that the evidence of the Sponsor's earnings can be said to be put in the form of a specified format, and given that it is not clear from the determination, or from the evidence before me today, what the date of the application is, or the period of time that is covered by the letter from the HMRC, I dismiss the appeal.

**Decision**

11. The decision of the First-tier Tribunal involved the making of an error of law such that it falls to be set aside. I set aside the decision of the original judge. I remake the decision as follows. This appeal is dismissed.
12. No anonymity order is made.

Signed

Date

Deputy Upper Tribunal Judge Juss

1<sup>st</sup> October 2014