



**UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER**

THE IMMIGRATION ACTS

Heard at: Sheldon Court, Birmingham
On: 2 May 2014

Decision Promulgated
On: 2 May 2014

Before

Upper Tribunal Judge Pitt

Between

Muhammad Majid

Appellant

and

Entry Clearance Officer - Abu Dhabi

Respondent

Representation:

For the Appellant: Mr Chaudhury, Gramdan Solicitors LLP

For the Respondent: Mr Mills, Senior Home Office Presenting Officer

DETERMINATION AND REASONS


1. The appellant is a national of Pakistan and was born on 8 August 2007.
2. This is an appeal by the appellant against the determination promulgated on 11

December 2013 of First-tier Tribunal Judge Ford which refused the appellant's appeal against the respondent's decision of 26 February 2013 to refuse entry clearance as a spouse.

3. There is no dispute that the substantive Immigration Rules could not be met. The required income of £18,600 set out in paragraph E-ECP.3.3 of Appendix FM of the Immigration Rules had not been shown.
4. The sole ground of appeal here is that Judge Ford erred in failing to allow the appeal under Article 8. It was argued that he did not apply correctly the ratio of MM v SSHD [2013] EWHC 1900 (Admin). Mr Chaudhury argued that MM was authority for the appeal being allowed by the First-tier Tribunal where it was accepted at [15] that the sponsor earned £15,096.
5. Mr Chaudhury's grounds and submissions on MM did not have merit. Mr Chaudhury argues that the ratio of MM is that the income threshold in spouse cases should be taken to be £13,124 per year (not £18,600 as required by the Immigration Rules) and the appeal allowed under Article 8 if an income of £13,124 is available to support the appellant.
6. That is not the ratio of MM. As Judge Ford stated correctly at [6] and [17], MM indicated that although the income threshold set by the Immigration Rules could be found to amount to a disproportionate interference with the family life of a British national and a non-British national spouse but this would depend on the circumstances in each case. The income threshold set by the Immigration Rules was expressly not quashed; see [121].
7. Where Judge Ford clearly had the correct test from MM in mind when making her Article 8 decision, it did not appear to me that she could be said to have erred when finding at [20] that there was no exceptionality here. There was nothing other than the failure to meet the income threshold that could be weighed for the appellant. The "combination of more than one of ... five features of the rules" stated to be onerous as detailed at [123] and [124] of MM was simply not a feature of this case in which the Article 8 claim was, in reality, only a "near miss" argument and one which could not succeed; see Patel & Ors v SSHD [2013] UKSC 72.
8. Mr Chaudhury sought to rely also on Gulshan (Article 8 - new Rules - correct approach) [2013] UKUT 00460 (IAC). That case is not helpful to this appellant. It sets down that the requirements of the Immigration Rules are to be the starting point in the Article 8 assessment and an Article 8 claim being refused where, as here, there is nothing other than there being some accepted income, but not enough.

DECISION

9. The decision of the First-tier Tribunal does not contain an error on a point of law and shall stand.

Signed: 
Upper Tribunal Judge Pitt

Date: 2 May 2014