



**Upper Tribunal  
(Immigration and Asylum Chamber)**

Appeal Numbers: OA/20820/2013

**THE IMMIGRATION ACTS**

**Heard at Field House**

**On 7<sup>th</sup> October 2014**

**Determination  
Promulgated**

**On 21<sup>st</sup> October 2014**

**Before**

**UPPER TRIBUNAL JUDGE MARTIN**

**Between**

**MRS MINAL VIJAY MEPANI  
(Anonymity Order not made)**

Appellants

**and**

**ENTRY CLEARANCE OFFICER - NAIROBI**

Respondent

**Representation:**

For the Appellants: Ms P Solanski (instructed by Farani Javid Taylor Solicitors LLP)

For the Respondent: Mr M Shilliday (Senior Home Office Presenting Officer)

**DETERMINATION AND REASONS**

1. This is an appeal to the Upper Tribunal, with permission, by the Appellant with regard to a determination of the First-tier Tribunal (Judge Traynor) promulgated on 6<sup>th</sup> June 2014.
2. The Appellant had sought entry clearance to the UK as the spouse of a person present and settled here. The Respondent refused that application

on 4th November 2013 on the basis that the Appellant in the Sponsor had not demonstrated that they were involved in a genuine and subsisting relationship which they intended to pursue with each other and they had not demonstrated an ability to meet the financial requirements of the Rules.

3. The application is governed by Appendix FM and the requirements contained therein.
4. The First-tier Tribunal had bundles from both the Appellant and Sponsor and heard oral evidence from the Sponsor.
5. It is clear from the determination (paragraph 24) that having heard the Sponsor's oral evidence and taking into account the contents of the Sponsor's bundle of documents the Judge was satisfied that the couple were in a genuine relationship that they intended to pursue and therefore met the requirements of Appendix FM-E-ECP.2.6 and 2.10.
6. That left the financial requirements. The Judge referred himself to the contents of the bundle and concluded (paragraph 34) that the Appellant had failed to provide the specified evidence identified in Appendix FM-SE – in particular the Sponsor's bank statements and at paragraph 30 found that there was no evidence of the rental income claimed. On that basis he dismissed the appeal.
7. The grounds argue that the Judge erred in failing to take into account evidence that was before him which indicated that at the date of the decision the Appellant met the requirements of the Rules. The Judge had applied the wrong part of Appendix FM-SE.
8. Mr Shilliday accepted that Ground 1 was made out in that the Judge had referred himself to the incorrect part of Appendix FM-SE, in particular that in relation to employment income as opposed to income from employment and/or shares in a limited company. Mr Shilliday indicated that he had looked at the documents contained in the Appellant's bundle before the First-tier Tribunal and was satisfied that all of the specified evidence was present.
9. In applying the wrong part of Appendix FM-SE the Judge erred and he erred further in failing to look at all of the documents in the Appellant's bundle which contained all of the necessary "specified evidence" that showed the Appellant met the requirements the Rules. As that was determinative of the appeal the error of law was clearly material. I therefore set aside the First-tier Tribunal's determination.
10. Based on Mr Shilliday's concession that all the specified evidence is now present and was present before the First-tier Tribunal, to show that the Appellant met the requirements of the Rules at the date of decision, I allow the appeal. This is not a case of whether or not a discretion should

be exercised; the Appellant clearly meets the requirements of Appendix FM and is entitled to succeed under the Rules.

11. The appeal to the Upper Tribunal is allowed. However, on the basis that the specified evidence was not before the Entry Clearance Officer, his decision was not incorrect and on that basis I make no fee award.

Signed

Date 20<sup>th</sup> October 2014

Upper Tribunal Judge Martin