Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: OA/09375/2014**

THE IMMIGRATION ACTS

Heard at Field House	**Determination Promulgated**
On 6 August 2015	**On 18 August 2015**

Before

Deputy Upper Tribunal Judge MANUELL

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

Mrs JAMINI SURESHKUMAR
(ANONYMITY DIRECTION NOT MADE)

Respondent

Representation:
For the Appellant: Mr E Tufan, Home Office Presenting Officer
For the Respondent: Mr K Sureshkumar, sponsor

DETERMINATION AND REASONS

Introduction

1. The Appellant (the Secretary of State) appealed with permission granted by First-tier Tribunal Judge Cruthers on 11 June 2015 against the decision and reasons of First-tier Tribunal Judge Suffield-Thompson who had allowed the Respondent's appeal against the Entry Clearance Officer's decision dated 31 July 2014 to refuse to grant the Respondent leave to enter the United Kingdom for settlement as a spouse under Appendix FM of the Immigration Rules. The

decision and reasons was promulgated on 30 March 2015. The appeal was determined on the papers as the Respondent had requested.

2. The Respondent is a national of Sri Lanka, born there on 18 July 1978. She had married her sponsor in India on 27 March 2014. He holds leave to remain in the United Kingdom as a refugee but the marriage post dated his status and so the requirements of Appendix FM applied to the Respondent, not paragraph 352A of the Immigration Rules. The Entry Clearance Officer refused the application because (a) two salary entries were missing from the sponsor's NatWest bank statements for the required period of 6 months and (b) the average income did not meet the threshold of £18,600. Appendix FM-SE was not satisfied. There were no exceptional circumstances and no breach of Article 8 ECHR as family life could be lived outside the United Kingdom.

3. Judge Suffield-Thompson allowed the appeal under the Immigration Rules, finding that the sponsor was paid £18,700 per annum. The judge did not address Appendix FM-SE.

4. Permission to appeal to the Upper Tribunal as sought by the Appellant was granted by Judge Cruthers because he considered that it was arguable that the judge had failed to address the two week gap in the salary deposits, in the context of the requirements of Appendix FM-SE.

5. Standard directions were made by the Upper Tribunal.

Submissions – error of law

6. Mr Tufan for the Secretary of State submitted that this was a clear case of legal error, as the grant of permission to appeal by the First-tier Tribunal indicated. The judge had evidently misconstrued Appendix FM-SE and so had missed an essential point in the refusal notice. No relevant findings had been made.

7. Mr Sreekumar, the Respondent's sponsor indicated that he wanted the judge's decision to be upheld.

The error of law finding

8. At the conclusion of submissions, the tribunal indicated that it found that the judge had fallen into material error of law, for the reasons succinctly indicated in the grant of permission to appeal by the First-tier Tribunal. The requirements of Appendix FM-SE are mandatory and the absence of the salary deposits was fatal to the application. The decision and reasons would be set aside and the appeal reheard immediately.

The rehearing and fresh decision

9. For clarity the tribunal will now refer to the parties by their designations in the First-tier Tribunal. No further evidence was required as the Appellant had to have submitted the specified evidence at the time of the entry clearance

application. That evidence was incomplete. Unfortunately for the Appellant and sponsor, any gap, however small, is fatal. The tribunal finds that the specified evidence was incomplete.

10. It follows that the tribunal upholds the Secretary of State's appeal.

11. There was no suggestion that the Appellant is not in a position to submit a fresh and compliant entry clearance application. No evidence of exceptional circumstances was shown. The Appellant and her sponsor can live as family in other places apart from the United Kingdom with which neither has any real connection. The sponsor's grant of refugee status is transferrable. Thus, however the Appellant's appeal is analysed, it must fail.

12. There was no application for an anonymity direction and the tribunal sees no need for one.

DECISION

The making of the previous decision involved the making of an error on a point of law. The tribunal allows the onwards appeal to the Upper Tribunal, sets aside the original decision and remakes the original decision as follows:

The appeal is dismissed

Signed **Dated**

Deputy Upper Tribunal Judge Manuell

TO THE RESPONDENT
FEE AWARD

As the appeal was dismissed, there can be no fee award

Signed **Dated**

Deputy Upper Tribunal Judge Manuell