



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: OA/12900/2014

**THE IMMIGRATION ACTS**

Heard at Bradford  
On 24 July 2015

Decision & Reasons Promulgated  
On 22 September 2015

Before

UPPER TRIBUNAL JUDGE CLIVE LANE

Between

NAZIMA NAZIR  
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

ENTRY CLEARANCE OFFICER - ISLAMABAD

Respondent

**Representation:**

For the Appellant: Mr T Hussain, instructed by Whiterose Blackmans Solicitors  
For the Respondent: Mrs R Pettersen, a Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant, Nazima Nazir, was born on 5 January 1992 and is a female citizen of Pakistan. She appealed to the First-tier Tribunal (Judge Batiste) against the decision of the respondent (the ECO, Islamabad) dated 12 September 2014 to refuse her entry

clearance as a partner under Appendix FM of HC 395 (as amended). The First-tier Tribunal dismissed her appeal under the Immigration Rules and on Article 8 ECHR grounds. The appellant now appeals, with permission, to the Upper Tribunal.

2. It is agreed by the parties that the appellant was unable to meet the financial requirements of the Immigration Rules. The appeal before the Upper Tribunal concerns Article 8 ECHR only and the First-tier Tribunal Judge's analysis of that ground. The judge wrote at [12 - 15]:
  12. I have gone on to consider the case outside the Rules as they are not a complete code in this case given that it is not disputed the appellant and sponsor are in a genuine and subsisting relationship I find the refusal to grant entry clearance does amount to an interference with the appellant's right to family life. I also accept that the interference has consequences of such gravity as potentially to engage Article 8. Equally I am satisfied that the decision is in accordance with the law and for a legitimate purpose namely the maintenance of proper immigration controls to secure the economic welfare of the country. The real issue is whether the decision is proportionate. I have carefully balanced the evidence in this case.
  13. It is argued on the appellant's behalf that because the sponsor had provided all other evidence as to his earnings being over £18,600 the weight to be attached to the legitimate aim of the Secretary of State is reduced. I accept this argument in principle given the public interest for people not to be a burden on the taxpayer. I also recognise that they are in a genuine relationship and it is claimed by the sponsor that the appellant can speak reasonable English. In support of this a TOEIC certificate was produced that did demonstrate relatively low achievements in her English language tests. It is clear from these documents that whilst the appellant can speak some very limited English, it is at a very basic level.
  14. However balanced against that is the fact that there is a method by which the appellant could come within the Immigration Rules if his claimed income is correct. It would be simple enough for him to pay his claimed cash income from his work as a tax driver into his bank account to enable the requisite bank statements to be provided. In evidence he accepted that despite the issues in this appeal he has still not sought to alter his banking methods. As a result he accepted that he was still unable to demonstrate his income through his bank statements. It is surprising that he has still not sought to alter his banking methods.
  15. Given that the Rules are designed to provide a method for the appellant to be allowed entry clearance and it the appellant's own decision to follow a financial approach that means he cannot provide the requisite documents [it is clear from the context that the judge is speaking of the sponsor here and not the appellant] I am satisfied that the decision of the respondent is proportionate to the legitimate aim sought. I note the established case law that there is no such thing as a 'near-miss' when it comes to the Rules. This case may amount to a near-miss but I am satisfied that the decision with regard to the Rules is correct as the requirements of Appendix FM-SE are not met and equally I am satisfied that the decision is

proportionate given that they have not lived together in the United Kingdom hitherto and have an established method to demonstrate that they do comply with the Rules. This appeal is therefore dismissed.

3. The grounds assert that the judge has failed properly to analyse Article 8 or to make proper findings of fact in relation to the husband/wife relationship. The appellant relies on *Mostafa (Article 8 in entry clearance)* [2015] UKUT 112 (IAC). That ground has no merit. As I have shown from the passage which I have quoted above, the judge has considered Article 8 and has, indeed, worked his way through the established five-step process suggested in *Razgar 2004 UKHL 27*. Further, it is difficult to identify other aspects of the relationship between the appellant and the sponsor regarding which the judge was required to make detailed findings of fact. He accepted that the relationship was genuine and that the couple have not lived together in the United Kingdom hitherto. I consider that the judge has made sufficient findings of fact on which he was able to base his Article 8 analysis. Given the factual matrix in this case, *Mostafa* adds little. Had the judge refrained from making any Article 8 analysis then the principle set out in *Mostafa* he may have erred in law by so refraining. What is clear about the judge's analysis is that he has taken a dim view of the failure of the United Kingdom sponsor to help himself and the appellant by changing his own financial and banking procedures in order to comply with the Immigration Rules. In such circumstances, it is difficult to see why the respondent or the Tribunal should step in and use Article 8 ECHR to assist an appellant who, whilst she might have taken steps to comply with the Immigration Rules has, for reasons best known to herself and the sponsor, chosen not to do so. To put it another way, it would be inappropriate to categorise the sponsor's failure to take the simple steps of changing his financial procedures as an exceptional circumstance requiring the grant of leave to enter under Article 8. I admit that the judge's assessment of Article 8 is brief but it is, on the facts of this case, adequate in my opinion. The judge reached an outcome which was plainly available to him on the evidence and there is nothing said in the grounds or in the oral submissions before the Upper Tribunal which compel the setting aside and remaking of this decision.

### **Notice of Decision**

This appeal is dismissed.

No anonymity direction is made.

I have dismissed the appeal and therefore there can be no fee award.

Signed

Date 20 September 2015

Upper Tribunal Judge Clive Lane