



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

Appeal Numbers: OA/19014/2013
OA/01055/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 26th February 2015**

**Decision & Reasons Promulgated
On 13th April 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE BAIRD

Between

**MRS ARZO SAIFULLAH (FIRST APPELLANT)
MISS HEELA AHMADULLAH (SECOND APPELLANT)
(ANONYMITY DIRECTION NOT MADE)**

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Mr T Khan, Counsel

For the Respondent: Mr S Whitwell, Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal by the Secretary of State for the Home Department against the determination of First-tier Tribunal Judge Somal issued on 10th November 2014 allowing under the Immigration Rules and on human rights grounds the Appellants' appeal against the decision of the Respondent made on 27th September 2013 to refuse

leave to enter the UK as the wife and daughter of a person present and settled in the UK.

2. Permission to appeal was granted by First-tier Tribunal Judge Denson on 7th January 2015. Judge Denson said:

- “2. The Respondent seeks permission to appeal on the basis that it is unclear, based on the determination, that the Appellants were able to demonstrate that as at the relevant date their United Kingdom Sponsor was earning the requisite income and that they complied with the provisions of Appendix FM-SE. In addition the Respondent submitted that there was a paucity of evidence before the Judge to demonstrate a subsisting relationship between the first Appellant and her husband and it was not clear what corroborative evidence the Judge (had) missing on the subsistence of the relationship between the parties.
3. The Judge in paragraph 12 of the determination made findings that the Appellants’ Sponsor through both his employers earned over the required sum of £22,400 gross per annum, however, it was not clear how this assessment was made, bearing in mind, although stated that a P60 had been produced, a copy of the same is not in the Appellants’ or Respondent’s bundles. Furthermore the bank statements show that the Sponsor in the second employment received no further payments from such employment after 13th June 2013 and therefore there is insufficient evidence to show that the Appellants could meet the relevant Immigration Rules as regards to the maintenance requirements.
4. The Judge in her determination made findings that the marriage was genuine and subsisting, this was based on the fact that copies of the Sponsor’s passport were produced at the hearing together with an English translation of the marriage certificate and the DNA test results which clearly showed the relationship between the Sponsor and the Appellants and that the findings in the determination that there was a genuine and subsisting relationship are utterly sustainable.
5. Due to the lack of evidence produced at the hearing as regards to whether or not the Appellants could comply with the relevant Immigration Rules as regards to the maintenance requirements as at the date of the decision I find that there is an arguable error of law and permission to appeal is therefore granted.”

3. The submissions in the grounds seeking leave to appeal say with regard to the financial requirements that it is unclear that the Appellants are able to demonstrate that the Sponsor was earning the requisite income. He could only demonstrate an income of £19,232. The ECO had not made a final decision on this due to the pending Court of Appeal decision in **MM** and the point made in the grounds is that it would have been appropriate to remit the matter back to the Entry Clearance Officer on the financial points so that the evidence could be properly appraised. There are submissions about the findings on the genuineness and subsistence of the marriage and complaints about the DNA evidence provided but I am not going to deal with this because permission was not granted on that point and it seems to me that the evidence before the Judge was satisfactory. It is submitted that the decision to allow the appeal on Article 8 grounds is fundamentally flawed because the status quo can be reasonably maintained, Section 117B of the 2002 Act has not been dealt with properly and the Judge has not engaged properly with Article 8.

4. Judge Somal found that the requirements of Appendix FM were met. He noted that the wage slips submitted by the Sponsor for one job showed a gross salary for the appropriate period of £19,232. The Sponsor had to show a gross income of £22,400 to comply with the Rules. The Sponsor said he had two jobs but he had only been in the second job for five months and so could only show five months' income. This was shown to be £6,699 gross. This was confirmed by a P60. The Judge noted that the Appellant had provided payslips, P60s and bank statements showing credits from his employers which show he earned over the required £22,400 gross per annum at the date of application. The Judge found that he does meet the requirements of Appendix FM-SE. It seems that the Judge carefully checked these figures and that they are documented. What is said in the grounds seeking permission is that the ECO contends that it is unclear, based on the determination, that the Appellants are able to demonstrate that as at the relevant date the Sponsor was earning the requisite income but I do not see that it is unclear from the determination. It is indeed very clear. The P60 for his second job is in the bundle of papers and was issued for the year to April 2013, the decision having been made in September 2013. The Appellant provided with the application the documents required by Appendix FM-SE.
5. I find therefore that the Appellant does meet the requirements of Appendix FM and FM-SE and I find that the determination does not contain a material error of law in relation to the Immigration Rules.
6. I do agree that the assessment of Article 8 and of interference with the family life of the Appellants is inadequate and that no proper assessment of proportionality has been made. It appears that Judge Somal allowed the appeal solely on the basis that the Appellants are the wife and daughter of the Sponsor who is living in the UK and this is in this case not sufficient and certainly would not have been if the Appellant failed to meet the requirements of the Rules. I therefore set aside the finding that the Appellants are entitled to remain in the UK on Article 8 grounds. In practical terms this makes no difference because I find that the appeal was properly allowed under the Immigration Rules.

Notice of Decision

I find that there is no material error of law in the findings of the First-tier Tribunal as they relate to the Immigration Rules and that the appeal of the Appellants against the decision of the Respondent was properly allowed. That decision shall stand. I set aside the findings under Article 8 ECHR.

No anonymity direction is made.

Signed

Date: 7th April 2015

N A Baird

Deputy Upper Tribunal Judge Baird