



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: OA115912014

**THE IMMIGRATION ACTS**

Heard at City Centre Tower, Birmingham  
On 25<sup>th</sup> March 2016

Decision & Reasons Promulgated  
On 25 May 2016

Before

DEPUTY UPPER TRIBUNAL JUDGE RENTON

Between

NAVEED AKHTAR  
(ANONYMITY ORDER NOT MADE)

Appellant

and

ENTRY CLEARANCE OFFICER - ISLAMABAD

Respondent

**Representation:**

For the Appellant: The Sponsor Ambreen Kausar  
For the Respondent: Mr M Diwnycz, Home Office Presenting Officer

**DECISION AND REASONS**

**Introduction**

1. The Appellant is a male citizen of Pakistan born on 12<sup>th</sup> May 1989. He applied for entry clearance to the United Kingdom as the husband of the Sponsor, Ambreen Kausar. That application was refused for the reasons given in a Notice of Decision

dated 27<sup>th</sup> August 2014. The Appellant appealed, and his appeal was heard by First-tier Tribunal Judge Thomas (the Judge) sitting at Birmingham on 12<sup>th</sup> May 2015. She allowed the appeal under the Immigration Rules for the reasons given in her Decision dated 27<sup>th</sup> May 2015. The Respondent sought leave to appeal that decision, and on 4<sup>th</sup> August 2015 such permission was granted.

### **Error of Law**

2. I must first decide if the decision of the Judge contained an error on a point of law so that it should be set aside.
3. The sole issue before the Judge was whether there would be sufficient maintenance for the Appellant in accordance with paragraphs EC-C.1.1(d) and E-ECP.3.3(b) of Appendix FM of HC 395. The Judge found that the Sponsor was in receipt of a Carer's Allowance and also received an income from her employment with Balti Night Limited. The application for entry clearance was refused on the basis that the Appellant had not submitted with his application the requisite documentary evidence in respect of the Sponsor's earnings. In particular, the Appellant had not submitted the Sponsor's personal bank statements showing entries corresponding to the Sponsor's wage slips. The Judge allowed the appeal on the basis of accepting the Sponsor's evidence that her earnings were paid to her in cash and were not paid into her bank account as they were utilised in paying living expenses.
4. At the hearing, Mr Diwnycz was content only to say by way of submission that he relied upon the grounds of application. He explained that as the Sponsor was in receipt of Carer's Allowance, she was exempt from the financial requirements imposed by paragraph E-ECP.3.3, but she was required to show her earnings by submitting the evidence specified in Appendix FM-SE.1.(n). As the Appellant had failed to include with his application the Sponsor's bank statements showing receipts of her earnings, those earnings could not be taken into account.
5. The Sponsor made a brief submission in response in which she repeated that she had been paid her earnings in cash and had saved the cash at home in order to meet living expenses.
6. I find an error of law in the decision of the Judge which I therefore set aside. The error of law is that the Judge was wrong to take into account when considering the Appellant's maintenance the earnings of his wife from Balti Night Limited. It is irrelevant that the Judge found that the Sponsor had such earnings. Those earnings should have been excluded from the Judge's consideration as the Appellant had failed to comply with the requirements of paragraph FM-SE.1.(n) of Appendix FM.

### **Remade Decision**

7. I proceeded to remake the decision in the appeal. The only maintenance available to the Appellant and which could be taken into account for the reasons explained above was the Sponsor's receipt of Carer's Allowance of £59.75 per week. This is less than the threshold figure of £18,600 per annum and therefore the appeal must fail under

the provisions of paragraph EC-C.1.1 of Appendix FM of HC 395. My remade decision is that the appeal is dismissed.

**Notice of Decision**

8. The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.
9. I set aside that decision.
10. I remake the decision in the appeal by dismissing it.

**Anonymity**

11. The First-tier Tribunal did not make an order for anonymity. I was not asked to do so and indeed I find no reason to do so.

Signed

Date 25 May 2016

Deputy Upper Tribunal Judge Renton

**TO THE RESPONDENT**  
**FEE AWARD**

As the appeal has been dismissed I can make no fee award.

Signed

Date 25 May 2016

Deputy Upper Tribunal Judge Renton