



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

Appeal Number: OA/17076/2013

THE IMMIGRATION ACTS

**Heard at Birmingham Employment
Centre
On 22 December 2015**

**Decision and Reasons
Promulgated
On 7 January 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE McCARTHY

Between

ENTRY CLEARANCE OFFICER, DHAKA

Appellant

and

**MAZADA BEGUM JOLY
(NO ANONYMITY ORDER)**

Respondent

Representation:

For the Appellant: Mr D Mills, Senior Home Office Presenting Officer
For the Respondent: Mr S Vokes, instructed by Samad & Co Immigration
(Witton)

DECISION AND REASONS

1. The ECO appeals against the decision and reasons statement of First-tier Tribunal Judge Burns that was promulgated on 16 February 2015 on the grounds that the judge failed to consider the relevance of the restrictions on evidence contained in appendix FM-SE to the immigration rules.

2. Mr Mills advised me that the issue at the heart of the ECO's appeal was whether the judge was required to consider the version of appendix FM-SE in force at the date of the first decision (22 July 2013) or at the date of the second decision (13 July 2014). Mr Mills asked if I could give an initial indication as to this issue because if I were to find the decision to be the earlier one then he had no submissions.
3. Having noted that the notice of appeal was submitted on 21 August 2013, that the second decision notice clearly stated at its end that it was not a fresh decision (merely further grounds for refusal), and that there was no right of appeal against the second decision notice, I was satisfied that the appeal was brought against the earlier decision. As per s.85 of the Nationality, Immigration and Asylum Act 2002 and bearing in mind the House of Lords decision in Odelola, I was satisfied that the facts and law that applied were those in force on 22 July 2013.
4. Mr Mills did not disagree and therefore had no submissions to make. He invited me to dismiss the ECO's appeal as it was based on a wrong assumption. I concur and as a result did not need to hear from Mr Vokes. I am satisfied that the judge applied the right law and that her decision is sound and should be upheld.

Decision

There is no error of law in Judge Burns's decision and reasons statement of 16 February 2015 and her decision is upheld.

Signed

Date

Judge McCarthy
Deputy Judge of the Upper Tribunal