



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: OA/16124/2014

**THE IMMIGRATION ACTS**

Heard at Field House  
On 16 November 2017

Decision & Reasons Promulgated  
On 21 December 2017

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAMBERLAIN

Between

ENTRY CLEARANCE OFFICER - NAIROBI

Appellant

and

FAIZA BAISHE ASMAN  
(ANONYMITY DIRECTION NOT MADE)

Respondent

**Representation:**

For the Appellant: Mr. P. Nath, Home Office Presenting Officer

For the Respondent: Ms S. Pinder, Counsel, instructed by Shanthi & Co. Solicitors

**DECISION AND REASONS**

1. This is an appeal by the Entry Clearance Officer against the decision of First-tier Tribunal Judge Rowlands, promulgated on 20 February 2017, in which he allowed Mrs. Asman's appeal against the Entry Clearance Officer's decision to refuse entry clearance as the spouse of the Sponsor.
2. For the purposes of this decision I refer to the Entry Clearance Officer as the Respondent and to Mrs. Asman as the Appellant, reflecting their positions as they were before the First-tier Tribunal.

3. Permission to appeal was granted as follows:

“It is arguable, as submitted within the grounds of appeal, that the Judge has materially erred in taking into account documents that were not submitted with the application, when considering whether or not the requirements of Appendix FM-SE had been met, in respect of the specified documents necessary to prove the financial requirements of the Rules. The Judge has not stated if the documents he took account of were submitted with the application, as opposed to after the application, as contended by the Secretary of State.”

4. The Sponsor attended the hearing. I heard submissions from both representatives following which I reserved my decision.

#### Error of Law

5. The Appellant’s appeal had previously been to the Upper Tribunal. The original decision of the First-tier Tribunal was set aside by way of a decision of Deputy Upper Tribunal Judge Shaerf dated 8 July 2016. In paragraph [17] he stated:

“Consequently his decision in that respect must be set aside but his findings as to the genuineness and subsistence of the Applicant’s marriage are retained and shall stand. This is not a points-based system appeal and so the principles in *DR (Morocco) (ECO: post-decision evidence) [2005] UKIAT 00038* will apply and the Applicant and her husband will have ample opportunity to ensure that the relevant documentation to show the Applicant meets the requirements of Appendix FM is supported by evidence in the specified form as provided by Appendix FM-SE.”

6. I find that the Appellant’s appeal was remitted for consideration specifically as to whether or not the Appellant met the financial requirements of Appendix FM-SE. As clearly set out by Deputy Upper Tribunal Judge Shaerf, the principles in DR (Morocco) applied and therefore the Appellant could provide evidence to show that she met the requirements of the immigration rules which had not been provided with the application, so long as it pertained to circumstances as at the date of the decision.

7. The grounds of appeal before me submit that the Judge should have dismissed the appeal on the basis that the Appellant could not meet the requirements of Appendix FM-SE as she had failed to provide the necessary specified documents with the application. There is no reference in the grounds to the decision of Deputy Upper Tribunal Judge Shaerf. This decision was not appealed against by the Respondent. However, it was clear, as set out by Deputy Upper Tribunal Judge Shaerf, that the evidence which could be provided was not restricted to evidence provided with the application. The Appellant was entitled to provide evidence to show that she met the requirements of Appendix FM-SE even if such evidence had not been before the

Entry Clearance Officer or the Entry Clearance Manager when the decision was made.

8. It was submitted by Ms Pinder that there was no basis for the Respondent's position. "Specified evidence" had to be provided under the immigration rules for the decision maker, be that the Secretary of State or the Entry Clearance Officer, but this requirement was not binding on the Tribunals. The case of DR (Morocco) provided that post-decision evidence could be considered so long as it pertained to circumstances as at the date of the decision.
9. There is no restriction in statute which prevents the Tribunal from considering evidence which was not before the decision maker in these circumstances. The only restriction is that the evidence pertains to the date of the decision.
10. It has not been submitted by the Respondent that the Appellant did not provide the evidence, only that she did not provide it with the application. While it is open for the Respondent to refuse the application because the evidence has not been submitted, that is not a ground for the First-tier Tribunal to dismiss the appeal.
11. Consequently I find that there is no arguable error of law identified by the grounds of appeal. No regard has been paid to the previous decision of the Upper Tribunal when compiling those grounds. There is no reference to paragraph [17] of that decision and the clear instruction from Deputy Upper Tribunal Judge Shaerf that post-decision evidence could be provided.
12. I accept that the decision is not detailed. However, the judge states at [7]:

"Before the hearing I had been provided with a bundle of documents which dealt with the finances of her spouse in the relevant months leading up to the application in 2014. There was no need to hear oral evidence and submissions at the hearing and I simply reserved my decision, which I now give."
13. It was submitted by Ms Pinder that the Record of Proceedings could assist in showing whether or not a concession had been made. She submitted that it was clear that a concession must have been made given that there were no submissions made by the Respondent. The Record of Proceedings is short and simply notes that no evidence or submissions were made and that there was a reliance merely on the documentation.
14. I find that the judge considered the evidence which had been provided. It has not been argued that it was not provided to the Respondent. In paragraph [8] the judge finds that this documentation shows that the Sponsor had two employments and that his income averaged in excess of £21,000. Presumably it is on this basis that no submissions were made by the Respondent's representative, who had received the bundle of documents in advance of the hearing.

15. I find that the grounds of appeal identify no arguable error of law, particularly given that the basis on which the decision was to be made by the First-tier Tribunal was clearly set out in the previous decision of the Upper Tribunal. The decision does not involve the making of an error of law.

**Notice of Decision**

16. The decision of the First-tier Tribunal does not involve the making of a material error of law and I do not set it aside. The decision of the First-tier Tribunal stands.
17. No anonymity direction is made.

Signed

Date 20 December 2017

Deputy Upper Tribunal Judge Chamberlain