



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/05725/2016

THE IMMIGRATION ACTS

Heard at Field House
On 10 July 2018
Decision given orally

Decision & Reasons Promulgated
On 31 January 2019

Before

UPPER TRIBUNAL JUDGE DAWSON
UPPER TRIBUNAL JUDGE BLUM

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

NAUREEN AFRIDI

Respondent

Representation:

For the Appellant: Mr T Wilding, Senior Presenting Officer
For the Respondent: Unrepresented

DECISION AND REASONS

1. The Secretary of State has been granted permission to appeal the decision of First-tier Tribunal Judge Fowell who allowed the respondent's appeal on human rights grounds against the decision of the Entry Clearance Officer dated 3 February 2016 refusing the respondent's application for entry clearance to the United Kingdom as the spouse of a British national. The Entry Clearance Officer accepted that the requirements as to suitability, eligibility as to the relationship, and English language

were met. The financial requirements were not however met on the basis that the declared income fell short of the threshold of £18,600 per annum.

2. The respondent was not represented before the First-tier Tribunal however her husband gave evidence before the judge. He is not here today and according to a letter signed by the respondent dated 6 July 2018 he is with her in Pakistan. The respondent proposed that her father-in-law will attend the hearing, but he has not. We see no justification in adjourning the hearing of this appeal in the absence of any explanation for his absence and having regard to the nature of the issues that we are to address
3. The Secretary of State has been granted permission by First-tier Tribunal Judge Saffer on the basis that it was obvious from a reading of the decision that the judge allowed the appeal by a slip of the pen having regard to the reasons given which were leading to the appeal being dismissed.
4. The First-tier Tribunal Judge sets out in detail in his decision, the evidence relied on by the respondent as to her husband's employment by McDonalds since 2012 and by Three Diamonds Indian Lounge which it was contended, in aggregate, resulted in an overall income of just over £25,000 a year. The judge had concerns about the reliability of the evidence in support of the Three Diamonds employment and concluded at [23] that the payslips provided were bogus and that the respondent had relied on false evidence in support of her application. Paragraph 24 of his decision sets out detailed reasons for this finding. At [27] the judge observed that:

“Even without the concerns raised in the refusal letter about the inability to contact Three Diamonds, the mis-match between bank statements and pay statements leads to the inescapable conclusion that this claimed second employment is not genuine and so Mr Afridi did not meet the income requirement under the Rules.”
5. The judge also considered the appeal under Article 8. After directing himself correctly as to the jurisprudence in *MM (Lebanon)* [2017] UKSC 10 and the impact on the financial criteria of the birth of a daughter, the judge concluded that it would not be justified, particularly having regard to the use of false evidence, to conclude that the decision was disproportionate under Article 8. The judge added to that conclusion the impact of Section 117B of the Nationality, Immigration and Asylum Act 2002. At [34] he concluded:

“Accordingly, and for all of the above reasons, the appeal is dismissed.”
6. On the next page however under the heading “Notice of Decision” it is stated that the appeal was allowed on human rights grounds. It is clear that this was a slip of the pen, nevertheless we are bound to have regard to the decision of the Tribunal in *Katsonga (“Slip Rule”: FtT’s general powers)* [2016] UKUT 228 (IAC). The Slip Rule (Rule 31 of the First-tier Tribunal Procedure Rules) cannot be used to reverse the effect of a decision.

7. With permission having been granted we are seized of this appeal in the Upper Tribunal. No reasons were advanced by the respondent to persuade us that the judge was correct in allowing the appeal. Mr Wilding correctly argued that in allowing the appeal the judge had erred. In our view the judge gave sound and sustainable reasons for dismissing the appeal and there was no basis for allowing the appeal.
8. We are satisfied that the First-tier Tribunal erred in allowing the appeal. We set aside the decision of the First-tier Tribunal and remake the decision. There has been no challenge by the respondent to the findings by the First-tier Tribunal pursuant to a notice under Rule 24 or by a cross-appeal if that were available. We adopt the findings and reasons of the First-tier Tribunal that were rationally open to the First-tier Tribunal on the evidence and conclude that unreliable evidence had been submitted in support of the contended income to meet the requirement under the Rules.
9. Accordingly, we dismiss the appeal by the respondent against the Entry Clearance Officer's decision.

Signed

Date 11 July 2018

UTJ Dawson

Upper Tribunal Judge Dawson