



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: HU/15972/2017

**THE IMMIGRATION ACTS**

Heard at North Shields  
On 10 May 2019  
Prepared on 10 May 2019

Decision & Reasons Promulgated  
On 15 May 2019

Before

DEPUTY UPPER TRIBUNAL JUDGE J M HOLMES

Between

SIDRA AFZAL  
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

ENTRY CLEARANCE OFFICER

Respondent

**Representation:**

For the Appellant: Ms Yousaf, Immigration Home and Away  
For the Respondent: Ms Pettersen, Home Office Presenting Officer

**DECISION AND REASONS**

1. The Appellant is a national of Pakistan who made an application for entry clearance to the UK as the spouse of the sponsor on 19 December 2016. That application was refused on 12 October 2017.
2. The Appellant's appeal against that refusal on Article 8 grounds came before the First-tier Tribunal on the papers, whereupon it was dismissed by First-tier Tribunal Judge NMK Lawrence in a brief decision promulgated on 16 August 2018.

3. The Appellant sought to challenge that decision, and her application for permission to appeal to the Upper Tribunal was granted by First tier Tribunal Judge Kelly on all grounds on 28 December 2018.
4. Neither party has applied under Rule 15(2A) for further evidence to be admitted in the remaking of the decision. Thus the matter comes before me.

Error of law?

5. The Judge appears to have considered the Appellant had a child [8] and as such it is common ground that he fell into error over the content of the evidence before him. It is also common ground that he either misunderstood, or, mis-directed himself as to the evidence concerning the sponsor's claim to have held two genuine employments. He did not engage adequately with the content of the refusal letter. Although this is a very brief decision, the parties are agreed that it discloses a material error of law. It is agreed that the Judge failed to adequately engage with the evidence before him, so that the Appellant was denied a fair hearing of her appeal.
6. When consideration turned to the nature of the appropriate remedy the parties noted that this remained an appeal on the papers, and the extensive delay to which the Appellant has been subject through no fault of her own. By consent, the decision upon the appeal will be re-made in the Upper Tribunal upon the evidence filed. There has already been significant delay in the disposal of the appeal, and neither party was keen for that to be exacerbated by remittal. In the circumstances I remake the decision upon the appeal on the evidence filed by the parties for the hearing on 19 July 2018. Neither party has sought to supplement that evidence subsequently.
7. The evidence is however very limited. There is little of relevance in the modest bundle filed for the appeal by the Respondent. The Appellant's unpaginated and unindexed bundle of 11 July 2018 contains no witness statement or letter from the sponsor or the Appellant.

Decision remade

8. It is not disputed that the couple are married, and thus I accept that they enjoy "family life" together, and that the decision under appeal engages their Article 8(1) rights.
9. The Respondent has placed in issue whether the application met the requirements of Appendix FM and FM-SE of the Immigration Rules, concerning the minimum income threshold. It is disputed that the sponsor was genuinely engaged in the employments detailed in the application, at the date the application was made, and that stance is taken as a result of the answers recorded in the decision letter as having been given by the sponsor to the ECO when questioned about the employment he was said to hold with "Four Seasons Food Services (NE) Ltd" ["FS"].
10. I note that no transcript of any interview between the ECO and the sponsor has been placed in evidence by the Respondent. On the other hand the Appellant has never requested one or complained that there has been any confusion over the answers given by the sponsor to the ECO and recorded in the decision letter. There is, for example, no evidence from the sponsor to suggest that his answers have been misunderstood or mis-recorded. I am satisfied that the decision letter makes it quite clear to the Appellant why the Respondent took the decision he did, and allowed

both herself and the sponsor to engage with those reasons and offer evidence in response. The reality is that the Appellant has failed to file evidence from the sponsor that engages properly with these reasons. In the circumstances I am satisfied on the balance of probabilities that these questions were asked of him, and that he was unable to answer them.

11. Although the heading to the letter dated 3 January 2017 purporting to be from Ibrar Ahmed as a director of FS, represents this business to be a limited liability company, the registered number is not given. No details are given of the company, beyond its trading address and registered address. Thus there is no evidence to show independently that it is actively trading, or to help explain the sponsor's inability to answer the ECO's questions. The letter in question represents the sponsor to hold a permanent position at an annual wage of £7,488, but does not explain what that position is, or what he has to undertake to earn that salary. There is no letter, or other evidence, from Ibrar Ahmed to explain how the sponsor could genuinely hold such an employment, and yet have been unable to name any other employee of the business, his manager, the owner of the business, or, explain what the nature of FS' business is, where it traded from, what the exterior of the business premises looked like, or, what his job entailed. Equally there is no evidence from the sponsor that does so.
12. I note that the sponsor has produced no evidence from HMRC to show that the earnings he has claimed to have received from either FS, or Azad Tandoori, have been declared for tax purposes, and the PAYE and NI deductions said to have been made in the payslips relied on have been reported to HMRC, acknowledged by HMRC, or, paid to HMRC
13. There are in evidence a number of copy documents that have the appearance of payslips issued to the sponsor in late 2016 and early 2017, which are identified as having been issued by Azad Tandoori, and record PAYE and NI deductions. The net figures at the foot, do appear to correspond to counter credits made to the sponsor's Nat West bank account of cash sums a few days after the payslip date. Equally, there are in evidence a number of copy documents that have the appearance of payslips issued to the sponsor in late 2016 and early 2017, which are identified as having been issued by FS and record PAYE and NI deductions. The net figures at the foot, also appear to appear to correspond to counter credits made to the sponsor's Nat West bank account of cash sums a few days after the payslip date.
14. Whilst I note that these sums have been credited to the sponsor's bank account, as recorded in the statements, I am not satisfied that this simple transfer of funds of itself establishes that both of the claimed employments are genuine. If both employments were genuine I would expect the sponsor to be able to identify who owned the businesses he worked for, who his managers were, and who were his fellow employees in those businesses. I would expect him to be able to identify what the nature of their trade was, and, what his own job within the businesses was. I would expect him to be able to identify the premises at which he discharged his duties, even if he could not provide the full postal addresses.
15. In the circumstances I am not satisfied on the balance of probabilities that the Appellant has demonstrated that she met the requirements of the Immigration Rules when she lodged her application for entry clearance, or, that she has ever met them

subsequently. There is no evidence before me that would allow me to find that she will never be able to meet them.

16. The couple must have married in the knowledge that unless the Appellant met the requirements of the Immigration Rules for entry as the sponsor's spouse that they would only be able to live together as a married couple in Pakistan. There is no suggestion the sponsor is unable to visit Pakistan in safety, or, that he could not settle there with the Appellant. I infer that their marriage was undertaken in Pakistan.
17. In the circumstances there is no evidence that would permit me to find that any special circumstances existed at the date of the application, or that any special circumstances have been created subsequently, that would mean the Appellant should be relieved of the obligation to make an application, paying the requisite fee, that meets the requirements of the Immigration Rules. It follows that the refusal of entry clearance was a proportionate response even if there was no enhanced public interest resulting from a dishonest claim that the sponsor genuinely earned the sums asserted. However in the light of my findings there is such an enhanced public interest.
18. Accordingly I remake the decision on the appeal so as to dismiss it.

#### Decision

19. The Decision of the First Tier Tribunal which was promulgated on 16 August 2018 did involve the making of an error of law that requires the decision to be set aside and remade.
20. The appeal is dismissed

#### Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

The Appellant has not sought anonymity, and is not granted anonymity. There is no obvious reason to grant anonymity.

Signed  
Deputy Upper Tribunal Judge J M Holmes

Date 10 May 2019

