



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: HU/15113/2019

**THE IMMIGRATION ACTS**

Heard at Field House Remotely by Skype  
On 28<sup>th</sup> October 2020

Decision & Reasons Promulgated  
On 16<sup>th</sup> November 2020

Before

UPPER TRIBUNAL JUDGE ALLEN  
UPPER TRIBUNAL JUDGE RIMINGTON

Between

MRS JANINE MARIE FALKINER  
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

ENTRY CLEARANCE OFFICER - UKVS SHEFFIELD

Respondent

**Representation:**

For the Appellant: In Person by telephone

For the Respondent: Mr E Tufan, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant appeals against the decision dated 6<sup>th</sup> May 2020 of First-tier Tribunal Judge Abdar, who dismissed her appeal against the refusal by the Entry Clearance Officer of 16<sup>th</sup> August 2019 to grant her a spousal visa under Appendix FM of the Immigration Rules (as amended).
2. The appellant and sponsor have been married for over 26 years and have three adult children together. The appellant and sponsor have lived in New Zealand for the past

25 years and wish to settle in the UK because the sponsor had obtained work in the UK commencing in September 2019. The appellant applied on 12<sup>th</sup> June 2019 for entry clearance.

3. The respondent considered the application and concluded that the appellant met the relationship, suitability and English language eligibility requirements but failed to meet the financial eligibility requirements of paragraph EC-P.1.1(d) of Appendix FM of the Immigration Rules (E-ECP.3.1).
4. It was contended that the appellant had not submitted an employment letter and the requisite six months of wage slips and bank statements dated from December 2018 to May 2019 for her sponsor's then employment in New Zealand and these documents were specified in the Immigration Rules in Appendix FM-SE and should be provided.
5. The findings of First-tier Tribunal Judge Abdar considered the documents which the appellant filed with her grounds of appeal on 5<sup>th</sup> September 2019 and stated that she had provided documents which were required but had only submitted as follows:
  - (a) Sponsor's former New Zealand employer's letter, Mitre 10, dated 10 August 2019, confirming position, salary and length of employment.*
  - (b) Six months of wage slips (February 2019 to August 2019).*
  - (c) Bank statements to show deposit of the Sponsor's pay.*
  - (d) Submitted the job offer in the UK letter for Sponsor and re-submitting the same, dated 31 May 2019, which confirms offer of employment with Toolstation starting on 30 September 2019, salary of £80,000, additional bonus of up to 20% of salary and other benefits."*
6. The judge noted that the appellant had emailed the Tribunal on 10<sup>th</sup> February 2020 requesting an expedition of the appeal hearing as the sponsor had moved to the UK in September 2019 to take up the offer of employment. The appellant was a nurse for the NHS prior to relocating to New Zealand with the sponsor 25 years ago and she intended to find employment again as a nurse once permitted to work.
7. The judge found that the Entry Clearance Officer had not responded to the directions, but the appellant had not filed any further evidence. The judge indicated that the appellant had accepted that she had not submitted the necessary documentary and financial evidence as required by the Rules, namely a letter from Mitre 10 and the sponsor's six months of payslips together with corresponding bank statements for the same period. The judge noted that with the appeal the appellant had provided a letter from Mitre 10 and payslips and bank statements from February 2019 to August 2019 but not the necessary payslips and corresponding bank statements for the six month period to the date of application (which was in June 2019). As a result the appellant had failed to meet the requirements of the Rules. The judge considered the appeal outside the Rules on Article 8 grounds and accepted that the sponsor had been in employment in the UK since 30<sup>th</sup> September 2019, on a salary far above the required minimum to meet the financial eligibility requirements of the

Rules but no corroborating payslips and corresponding bank statements had been filed with the Tribunal.

8. The judge therefore decided that the appellant had failed to meet the requirements of the Rules as at the date of the application and it was not disproportionate for the appellant to make a fresh application with adequate evidence for entry clearance rather than making an exception for the appellant to satisfy the Rules.
9. In her grounds of appeal the appellant stated in relation to the documents submitted:

*“This was because a number of these documents were ‘lost’ after I submitted them with my original visa application and again with the appeal application. These documents were submitted by me in the original application as well as the appeal application but have not been transferred/forwarded to the Home Office or included in the appeal bundle.”*
10. Permission to appeal was granted by First-tier Tribunal Judge Adio on 25<sup>th</sup> June 2020 on the basis that it was arguable there was an error of law in failing to carry out a proper proportionality assessment in the circumstances.
11. At the hearing before the Upper Tribunal Mr Tufan made reference to an Entry Clearance Manager’s letter which was not on file and which indicated that the December 2018 payslip was not a requirement and he accepted that all the relevant documentation had indeed been submitted by the appellant with her application. Mr Tufan conceded that the matter should be allowed under the Immigration Rules and thus on human rights grounds.
12. The appellant attended in person by telephone at the hearing at 2.30am New Zealand time and relayed her distress at the length of time that this appeal had taken, that being over sixteen months. She confirmed that she was very particular in supplying the relevant evidence with the application and the various transferring of documentation from one site to another because of outsourcing led to the documentation being lost by the Entry Clearance agents.
13. Unbeknown to the First-tier Tribunal judge there would appear to have been further documentation on the Entry Clearance file and not disclosed to him not least the Entry Clearance Manger’s decision which acknowledged that certain information was not required. The judge, who noted that the Entry Clearance Officer had not responded to a Tribunal direction to file further documentation, therefore proceeded on an erroneous basis with regard to the relevant documentation. That, through no fault of the judge, was a procedural irregularity and a material error of law. We set aside the decision of the First-tier Tribunal.
14. In view of Mr Tufan’s concession we consider that the appellant has met the relevant requirements of Appendix FM-SE of the Immigration Rules and has fulfilled the financial requirements criteria. We therefore allow the appeal on Article 8 grounds. There has been no public interest objection raised to allowing the appeal (indeed the appellant has fulfilled the Immigration Rules) and further any such refusal would

result in unjustifiably harsh consequences for the appellant and be in breach of Article 8 of the European Convention on Human Rights. As the appellant explained, she had been separated from her husband whilst he had taken up employment in the United Kingdom and she had been forced to remain in New Zealand.

15. **Although we have no power to direct the Entry Clearance Officer to expedite this matter, we would urge any official to consider issuing a visa as a matter of urgency.**

*Notice of Decision*

The appeal of Mrs Falkiner is allowed on human rights grounds.

Signed *Helen Rymington*

Date 16<sup>th</sup> November 2020

Upper Tribunal Judge Rymington

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

As we have allowed the appeal and because a fee has been paid or is payable, we have considered making a fee award and have decided to make a fee award of any fee which has been paid or may be payable not least because of the delay and administrative difficulties.

Signed *Helen Rymington*

Date 16<sup>th</sup> November 2020

Upper Tribunal Judge Rymington