



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

Appeal Numbers: HU/00315/2019
& HU/01476/2019 (V)

THE IMMIGRATION ACTS

**Heard at: Field House
On: 22 February 2021**

**Decision & Reasons Promulgated
On: 4 March 2021**

Before

UPPER TRIBUNAL JUDGE KEBEDE

Between

**SUMAIRA [Z]
[M Z]**

Appellants

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms I Mahmud, instructed by ASR Legal Solicitors Ltd
For the Respondent: Ms A Everett, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This has been a remote hearing to which there has been no objection by the parties. The form of remote hearing was skype for business. A face to face hearing was not held because it was not practicable, and all issues could be determined in a remote hearing.
2. The appeals come before me following the grant of permission to appeal to the Upper Tribunal.

3. The appellants, mother and daughter, are nationals of Pakistan, born on 15 April 1987 and 1 July 2015 respectively. They applied on 17 September 2018 for entry clearance to the UK under Appendix FM of the immigration rules on the basis of their family life with the sponsor, Zahoor Hussain, the partner of the first appellant and the father of the second appellant.

4. The appellants' applications were refused on 3 December 2018 on the basis that they could not meet the eligibility requirements of Section E-ECP of Appendix FM. The respondent noted that the appellants were required to demonstrate that the sponsor had a gross income of at least £22,400 per annum but considered that they had failed to provide the required, specified evidence to demonstrate such an income. The respondent noted that the appellants claimed that their sponsor earned an annual salary of £15,522 from his employment with 2 Sister Food Group and that he was also self-employed as a private hire driver and earned £8,227 in the last full financial year and £7,132 in the previous financial year, before tax. However, the payslips provided did not cover the entire 6 month period prior to the date of the application and the respondent was therefore not satisfied that the sponsor earned an annual salary of £15,522. Further, the bank statements provided did not cover the entire 2016/17 financial year and it was not clear from the bank statements when the sponsor received an income from self-employment. The respondent could not therefore be satisfied that over the past two financial years the sponsor had earned an average of £22,400 through employment and self-employment. The respondent considered further that there were no exceptional circumstances justifying a grant of entry clearance on Article 8 grounds.

5. The appellants appealed that decision and the appeal came before First-tier Tribunal Judge Watson on 17 June 2019. The judge accepted that the sponsor was employed by 2 Sister Food Group and that he was also self-employed as a taxi driver, but did not accept his oral claim to have been paid around the same for the past three years to be borne out by the paperwork. The judge did not accept that the requirements had been met under Appendix FM-SE in regard to the relevant documentary evidence and considered that the financial requirements of the immigration rules were therefore not met. The judge considered there to be no exceptional circumstances and that the decision was therefore not disproportionate. There was no breach of Article 8. The appeal was accordingly dismissed.

6. The appellants sought permission to appeal that decision to the Upper Tribunal on the grounds that the documentary evidence provided demonstrated the required income and that the judge had erred by failing to consider the sponsor's income of £8227 from self-employment as net income/ profit rather than gross income. Furthermore, the judge failed to consider the best interests of the child.

7. Permission was refused in the First-tier Tribunal but was granted by the Upper Tribunal on 5 December 2019 on a renewed application on the grounds that *"it is arguable that there was sufficient evidence to show that the appellants satisfied the financial requirements of the Immigration Rules"*.

8. The matter then came before me. Ms Mahmud submitted that the documentary evidence before the First-tier Tribunal showed that the financial requirements of the immigration rules were met. Ms Everett accepted that the evidence showed that the sponsor had the required income and that the financial requirements were met at the relevant time and she agreed that the decision in the appeal should accordingly be set aside and re-made by allowing the appeal, as requested by Ms Mahmud.

9. In light of Ms Everett's helpful concession, I need not provide any detailed reasons, other than to accept that the sponsor's income was sufficient to meet the financial requirements of the immigration rules at the time of the respondent's decision. There is no public interest in refusing entry clearance to the appellants, given that the respondent had no other concerns, and accordingly the refusal of entry clearance is disproportionate and in breach of Article 8. The judge erred in law in finding otherwise and her decision must be set aside and re-made by allowing the appellants' appeal.

DECISION

10. The making of the decision of the First-tier Tribunal involved an error on a point of law. I set aside the decision and re-make it by allowing the appeals on Article 8 grounds.

Signed: *S Kebede*
Upper Tribunal Judge Kebede

Dated: 22 February 2021