



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: OA/10502/2013

**THE IMMIGRATION ACTS**

Heard at Bradford  
On 16 June 2014

Determination Promulgated  
On 3 July 2014

Before

UPPER TRIBUNAL JUDGE CLIVE LANE

Between

FARHAN ALI

Appellant

and

ENTRY CLEARANCE OFFICER - ISLAMABAD

Respondent

**Representation:**

For the Appellant: Mrs Shafait Bibi Khan (Sponsor)  
For the Respondent: Mr Diwncyz, a Home Office Presenting Officer

**DETERMINATION AND REASONS**

1. The appellant, Farhan Ali, was born on 3 July 1993 and is a citizen of Pakistan. He applied to enter the United Kingdom as a spouse of the sponsor (Mrs Shafait Bibi Khan) whose application was refused by the Entry Clearance Officer on 17 April 2013. The appellant appealed to the First-tier Tribunal (Judge R Caswell) which, in a determination promulgated on 24 February 2014, dismissed the appeal. The appellant now appeals, with permission, to the Upper Tribunal.

2. Granting permission, Judge Adio limited the appeal to the Upper Tribunal on Article 8 ECHR grounds only. In granting permission, he noted:

Having decided to consider Article 8 as an obvious point and make very positive findings about the sponsor and the desire of both parties to very much want to live together, the judge should arguably have assessed proportionality and given sufficiently reasoned findings particularly as the maintenance threshold of £18,600 under the Rules had been satisfied.

3. Judge Caswell had noted that “All the indications are that [the sponsor] earns over £18,600 gross per year” but she had not provided “the required documents” in order to prove that as a fact. As regards Article 8 Judge Caswell wrote [10]:

There was no appeal on Article 8 grounds but I considered the position nonetheless. The appellant cannot succeed in any Article 8 appeal under Appendix FM to the Rules since he does not meet the tests there. I considered whether there were ‘arguably good grounds’ for saying that there are ‘compelling circumstances not sufficiently recognised under the Rules’ in this case, but could not find that there were. I accept that the sponsor had been working very hard and the couple very much want to live together as husband and wife in the UK, but there are not exceptional matters should as to lead to assessment of the position under the general Article 8 case law. In the circumstances, any appeal on Article 8 grounds fails also.

4. Judge Caswell directed herself at [7] to the decision of the Upper Tribunal in *Gulshan* [2013] UKUT 640. The judge was clearly of the view that “very much wanting to live together as husband and wife in the UK” did not amount to an exceptional matter such as to lead her to consider Article 8 ECHR outside the Immigration Rules. Although she does not mention it, it is also clear that the fact that the sponsor appeared to earn in excess of the income required by the Immigration Rules likewise did not amount to an exceptional circumstance. I do not find that her judgment is arguably wrong in law. As acknowledged by the Court of Appeal in *MF* [2013] EWCA Civ 1192, the Immigration Rules concerning Article 8 constitute a complete code and is likely that only appeals with very unusual or compelling circumstances not anticipated by the provisions of the Rules are likely to succeed under Article 8 ECHR outside of the Rules. There is nothing about the circumstances of this appeal which would call into question the judge’s reasoning or which might indicate that she has misapplied *Gulshan* and *MF*. Nothing has been put before us which requires the Upper Tribunal to revisit Judge Caswell’s decision. In the circumstances, the appeal is dismissed. There is, of course, nothing to prevent the appellant making a further application especially in light of the fact that the sponsor is now aware of the documentary evidence which she must produce to prove her income. However, that is a matter for the appellant, the sponsor and their advisers.

## **DECISION**

5. This appeal is dismissed.

Signed

Date 20 June 2014

Upper Tribunal Judge Clive Lane