



IAC-AH-DN-V1

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

Appeal Number: IA/39132/2014

**THE IMMIGRATION ACTS**

**Heard at Bradford Upper Tribunal  
On 1 June 2015**

**Decision & Reasons Promulgated  
On 15 July 2015**

**Before**

**UPPER TRIBUNAL JUDGE CLIVE LANE**

**Between**

**ISHTIAQ RAHEEM  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: In person

For the Respondent: Mrs R Pettersen, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant, Mr Ishtiaq Raheem, was born on 28 April 1989 and is a male citizen of Pakistan. He entered the United Kingdom in February 2011 as a student. He had subsequently applied for leave to remain on the basis of his family life as a partner in April 2014 but that application was refused provisionally under the Immigration Rules pending the outcome of the appeal of the Secretary of State in *MM [2014] EWCA Civ 985*. Following the judgment of the Court of Appeal in *MM*, the appellant's application was finally refused on 27 May 2014 and the appellant was

given three weeks within which to submit a further application and/or documents in support. His appeal was determined on the papers by the First-tier Tribunal (Judge G D Tobin) which, in a decision promulgated on 30 January 2015, dismissed the appeal. The appellant now appeals, with permission, to the Upper Tribunal.

2. The appellant attended the Upper Tribunal hearing at Bradford on 1 June 2015. Mrs R Pettersen, a Senior Home Office Presenting Officer, appeared for the respondent.
3. Mrs Pettersen submitted to me that the offer made by the Secretary of State to the appellant to supply further evidence made clear that the evidence in question should be financial documentation showing the circumstances of the sponsor and appellant in the period of six months prior to the making of the original application; evidence submitted after the decision relating to a period after the date of application could not be taken into account. Mrs Pettersen did not, however, disagree with the appellant's submission that that evidence indicated that his wife now earns sufficient income to enable the appellant to cross the income threshold of £18,600 per annum. The judge, in Mrs Pettersen's submission, had correctly found that "the appellant's spouse's salary had subsequently increased [following the submission of the application] but ... the only evidence that could be accepted was that related to the appellant's circumstances at the time it was accepted for consideration (*sic*)." [8]
4. I agree with Mrs Pettersen. As I explained to the appellant and his wife at the hearing, if they are now able to meet the financial and other criteria for leave to remain, then the proper course of action is for the appellant to submit a new application. I found that the judge was entirely correct at [22] to find that "the application was made on 9 April 2014 and it is at that point that the assessment relates although the applicant had the benefit of additional time to obtain the required documentation."
5. The judge had also considered EX.1 of Appendix FM. He noted that the respondent considered that the appellant had not "raised any 'insurmountable obstacles' as to why he and/or his spouse could not pursue family life in his home country or elsewhere." The judge noted that the appellant had "spent all of his formative years in Pakistan, 22 years in total, he provided no evidence to show that there was or would be any problems with re-integrating to Pakistan." As regards the appellant's wife, it was clear that, although she would suffer some disruption to her social and wider family life and her employment, it could not be argued that she would face insurmountable obstacles in relocating to enjoy her family life with the appellant in Pakistan. I find that the judge was also correct to note that this was an appeal in which the circumstances of the appellant and his spouse were adequately covered by the Immigration Rules; there were no exceptional circumstances not covered by those Rules such as might justify a grant of leave to remain under Article 8 ECHR.
6. This is an unfortunate case in which the appellant has narrowly failed to meet the requirements of the Immigration Rules. However, I am in no doubt that the judge came to the right decision and, in particular, correctly excluded evidence of the appellant's and sponsor's financial circumstances which post-dated the date of the

original application. I am satisfied that the appellant was not misled by the Secretary of State's invitation to him to supply further evidence appertaining to his circumstances prior to the date of the application. However, as I have already noted, it is open to the appellant to make a further application providing particulars of his wife's earnings which may now meet the necessary provisions and it is to hoped that this failed application and appeal will not count against him.

**Notice of Decision**

This appeal is dismissed.

No anonymity direction is made.

Signed

Date 10 July 2015

Upper Tribunal Judge Clive Lane

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

I have dismissed the appeal and therefore there can be no fee award.

Signed

Date 10 July 2015

Upper Tribunal Judge Clive Lane