



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

Appeal Number: OA/13286/2013

THE IMMIGRATION ACTS

**Heard at Sheldon Court, Birmingham
On 22 December 2014
Given 22 December 2014**

**Decision & Reasons Promulgated
On 14 January 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE DAVEY

Between

ENTRY CLEARANCE OFFICER, CHENNAI

Appellant

and

**SITHI AYISHA MOHAMED BAHURUDEEN
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: Mr Mills, Senior Presenting Officer
For the Respondent: Mr Murphy, Counsel.

DECISION AND REASONS

1. In this determination the Secretary of State is referred as the Entry Clearance Officer. The Respondent is referred as the claimant.
2. The claimant, a national of India, date of birth 10 February 1990, appealed against the Entry Clearance Officer's decision, dated 8 May 2013, to refuse entry clearance as a partner under Appendix FM of the Immigration Rules with particular reference to

paragraph EC-P.1.1. The refusal was on three grounds. First, a failure to provide the necessary evidence of gross annual income to meet the £8,600 threshold; secondly, a failure to produce bank statements to show salary relied upon passing into and out of the Sponsor's bank account; and Thirdly, a failure to provide specified documents evidencing the Sponsor's employment.

3. These refusals were with reference to paragraph 2 of Appendix FM-SE and under EC-P.1.1 of Appendix FM-SE and under EC-P.1.1(d) of Appendix FM (E-ECP.3.1).
4. The matter came before First-tier Tribunal Judge A Metzger who, on 15 July 2014, allowed the appeal under Article 8 of the ECHR.
5. Permission to appeal was given to the Secretary of State by First-tier Tribunal Judge Saffer on 4 August 2014.
6. The judge properly concluded, and indeed it was wholly properly conceded by Mr Murphy who appeared on behalf of the Claimant, that the Claimant could not come within the Rules and therefore the case was directly argued without further ado by reference to the circumstances which it was said meant that the Claimant would now, as at the hearing before the First-tier Tribunal Judge on 30 June 2014, through the Sponsor meet the financial requirements. The judge having found that the Claimant did not meet those financial requirements nevertheless originally followed the decision in MM [2013] EWHC 1900 and the decision in the High Court by Mr Justice Blake who expressed the view that the financial limits were not sustainable in law. The views of Mr Justice Blake were overturned by the Court of Appeal in the case of MM [2014] EWCA Civ 985. In that respect the First-tier judge erred. But the judge went on to conclude that because the Appellant did not succeed at the date of decision: Nevertheless in the light of the sponsor's present full-time employment now the earnings or average gross income was in excess of the £18,600 limit. Accordingly it was disproportionate to require the claimant to make further application and the judge allowed the appeal under Article 8 of the ECHR.
7. It is unarguable that the judge made that decision considering the matter as at the date of the hearing and failed to recall the longstanding case law, particularly of AS (Somalia) [2009] UKHL 32 which makes plain that in Section 82(1) appeals there are limitations the appeal confined to the date of the ECO's decision.
8. In these circumstances the approach the judge took was wrong in law the Article 8 ECHR case could not have been determined as and when he thought it did. It is clear that the judge found that the Sponsor gave reliable and truthful evidence concerning his current financial circumstances. There was nothing to suggest that there was anything inappropriate or misleading or fraudulent as to the evidence that he did provide. At this stage it is clear that the judge also never dealt with the second and third bases upon which refusal had arisen. Whether that was a matter of oversight is difficult to tell but it would appear to be so because otherwise it is hard to see how he could have so freely gone on to conclude, as he must have done, that all other

relevant elements of the requirements of the Rules were met and therefore it was disproportionate in the circumstances that he judged them to be in relation to the gross earnings.

9. For these reasons I am satisfied that the original decision cannot stand. Accordingly the decision must be remade. Having canvassed the matter with the parties in the light of the findings, I am satisfied that at the relevant date of the ECO's decision the Claimant could not meet the relevant requirements of Appendix FM and at that same date the evidence of private/family life rights did not show the financial circumstances were otherwise nor were there any other identified evidence to show that the Secretary of State's decision was disproportionate or outwith the public interest under Article 8 ECHR. In reaching that conclusion I have taken into account the provisions of Section 117 A and 117B of the NIAA 2002.
10. Accordingly, the Claimant's appeal against the ECO's decision is dismissed under the Immigration Rules and under Article 8 of the ECHR.

ANONYMITY

No anonymity was requested and none seems necessary or appropriate in the circumstances of the case.

Signed

Date 7 January 2015

Deputy Upper Tribunal Judge Davey

FEE AWARD

The appeal has failed and therefore it is not appropriate to make a fee award in the sum of £140 paid.

Signed

Date 7 January 2015

Deputy Upper Tribunal Judge Davey