



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: OA/16497/2013

**THE IMMIGRATION ACTS**

Heard at Bradford  
On 12 November 2014

Decision & Reasons Promulgated  
On 12 January 2015

Before

UPPER TRIBUNAL JUDGE CLIVE LANE

Between

ENTRY CLEARANCE OFFICER - ISTANBUL

Appellant

and

AFSANEH GHADRI SANGACHINI

Respondent

**Representation:**

For the Appellant: Mrs Pettersen, a Senior Home Office Presenting Officer  
For the Respondent: Miss Khan, instructed by Ison Harrison

**DETERMINATION AND REASONS**

1. I shall in this determination refer to the appellant as the respondent and to the respondent as the appellant (as they appeared respectively before the First-tier Tribunal). The appellant is a citizen of Iran who was born on 21 March 1982. She

applied for entry to the United Kingdom as a partner under Appendix FM of HC 395 but her application was refused on 4 July 2013. She appealed to the First-tier Tribunal (Judge Mensah) which, in a determination promulgated on 14 July 2014, dismissed the appeal. The appellant now appeals, with permission, to the Upper Tribunal.

2. The appellant's application was refused because the Entry Clearance Officer was not satisfied that the appellant and her husband (Masoud Rahimi) were able to meet the income requirements of the Immigration Rules. The judge found in favour of the appellant in respect of that reason for refusal concluding at [8] that the couple would have a total income of £18,600 "which meets the minimum financial requirements [of the Rules]." What the judge failed, however, to do was properly to address the other ground of refusal namely that the appellant had produced insufficient evidence to satisfy the ECO that her relationship with her spouse was subsisting. Both representatives before me agreed that the judge appears to have believed that she was unable to take into account post-decision evidence to support the appellant's assertion that she is in a subsisting relationship with her spouse. That evidence was extensive, including details of telephone calls, internet exchanges and other written evidence. I find that the judge has failed to apply *DR (ECO: Post-Decision Evidence) Morocco\* [2005] UKIAT 00038*. She should have had regard to the post-decision evidence but she failed to do so. Her failure has led me to set aside her determination and to re-make the decision.
3. I have considered the evidence of the subsistence of the relationship very carefully and find that it satisfied me to the standard of the balance of probabilities that the appellant and respondent were, at the date of the immigration decision, and since that date in a subsisting relationship. In the circumstances, the appellant satisfies each of the requirements of Appendix FM of HC 395 and in consequence I allow her appeal against the ECO's decision.

## DECISION

4. The determination of the First-tier Tribunal promulgated on 14 July 2014 is set aside. I have re-made the decision. The appellant's appeal against the Entry Clearance Officer's decision of 14 July 2013 is allowed under the Immigration Rules.

Signed

Date 19 November 2014

Upper Tribunal Judge Clive Lane