



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: OA/19965/2013

**THE IMMIGRATION ACTS**

Heard at Newport  
On 10 June 2015

Decision & Reasons Promulgated  
On 23 June 2015

Before

UPPER TRIBUNAL JUDGE GRUBB

Between

LITON ALAM

Appellant

and

ENTRY CLEARANCE OFFICER - DHAKA

Respondent

**Representation:**

For the Appellant: Mr G Hodgetts, instructed by South West Law  
For the Respondent: Mr D Mills, Home Office Presenting Officer

**DETERMINATION AND REASONS**

1. The appellant is a citizen of Bangladesh who was born on 8 July 1987. He applied for entry clearance to join his wife (the sponsor) in the UK. That application was refused by the Entry Clearance Officer on 27 October 2013 and the appellant appealed to the First-tier Tribunal. Before that hearing took place, the ECO made a fresh decision on 7 September 2014 in the light of the Court of Appeal's decision in R (MM (Lebanon))

v SSHD [2014] EWCA Civ 985. The ECO maintained the earlier refusal of entry clearance.

2. The appeal came before the First-tier Tribunal (Judge Mathews) on 18 November 2014. Judge Mathews allowed the appeal against the application of the general refusal ground in para 320(11) of the Rules but dismissed the appeal on its merits both under the Rules and Art 8. In relation to the Immigration Rules, Judge Mathews found that the appellant could not meet the “partner” provisions in EC-P of Appendix FM in two respects. First, the judge was not satisfied that the appellant met the English language requirement. Secondly he was not satisfied in respect of the financial requirements, namely based upon her income in the six months prior to the application, that the sponsor had a pro rata income of £18,600 per annum.
3. The appellant sought permission to appeal to the Upper Tribunal. On 26 January 2015, the First-tier Tribunal (DJ Macdonald) granted the appellant permission to appeal to the Upper Tribunal on the basis that the judge was arguably wrong not to take account of the appellant’s English language certificate which was in existence at the date of decision and secondly the Judge had failed to take into account all the documentary evidence in relation to the appellant’s claimed income.
4. On 3 February 2015, the respondent served a rule 24 notice in which he stated that he did not “oppose the appellant’s application for permission to appeal” and invited the Tribunal to determine the appeal at a fresh oral hearing.
5. Thus, the appeal came before me. The error of law being conceded, the decision fell to be re-made.
6. Mr Mills, who represented the respondent, conceded that the appellant had established the requirements in Appendix FM. He accepted that the evidence, in accordance with Appendix FM-SE, demonstrated that the sponsor earned sufficient income to satisfy the requirements of Appendix FM. Further, Mr Mills accepted that the appellant’s English language certificate was in existence at the date of decision, albeit that it was only produced at the appeal hearing. He accepted that the appellant met the English language requirement on the basis of that certificate.
7. Mr Mills acknowledged that the judge had found in the appellant’s favour on para 320(11) of the Rules and that had not been cross-appealed by the respondent. In those circumstances, he invited me to allow the appellant’s appeal.
8. In addition, Mr Mills did not suggest that the appellant did not currently meet the financial requirements of the Rules and that, therefore, he accepted that there was no reason why entry clearance should not be granted to him as a spouse to join his wife in the UK.

## **Decision**

9. The decision of the First-tier Tribunal to dismiss the appellant’s appeal under the Immigration Rules and Art 8 involved the making of an error of law and is set aside.

10. I remake the decision allowing the appellant's appeal under the Immigration Rules, namely Section EC-P of Appendix FM. The appellant is entitled to the grant of entry clearance as a spouse.

Signed

A Grubb  
Judge of the Upper Tribunal

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

I do not make a fee award as the appellant's appeal has only been allowed on the basis of evidence produced at the appeal hearing (the English language certificate) and which was not provided to the Entry Clearance Officer when making his decision.

Signed

A Grubb  
Judge of the Upper Tribunal