



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

Appeal Number: OA/11220/2014

THE IMMIGRATION ACTS

Heard at Bradford

On 10 March 2016

**Decision &
Promulgated
On 24 March 2016**

Reasons

Before

**Deputy Upper Tribunal Judge Pickup
Between**

**Shipa Begum
[No anonymity direction made]**

Appellant

and

The Entry Clearance Officer Dhaka

Respondent

Representation:

For the appellant: Mr J Holt, instructed by John Barkers Solicitors
For the respondent: Mr Diwnycz, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant, Shipa Begum, date of birth 2.7.96, is a citizen of Bangladesh.
2. This is her appeal against the decision of First-tier Tribunal Judge Wilson promulgated 3.6.15, dismissing on immigration and human rights grounds her appeal against the decision of the Entry Clearance Officer to refuse entry clearance to the United Kingdom as the child of the sponsor Mr Geda Miah, a British citizen settled in the UK. The Judge heard the appeal on

20.5.15.

3. First-tier Tribunal Judge Nicholson granted permission to appeal on 1.9.15.
4. Thus the matter came before me on 10.3.16 as an appeal in the Upper Tribunal.

Error of Law

5. For the reasons set out below I found such error of law in the making of the decision of the First-tier Tribunal as to required the decision of Judge Wilson to be set aside and remade.
6. The application made on 25.5.14 for entry clearance was considered by the Entry Clearance Officer under paragraph E-ECC of Appendix FM, erroneously referred to in the first decision of 2.7.14 as EC-P 1.1. The second decision, dated 14.8.14, which was in the form of a review, refused the application on the basis that the appellant did not meet the income threshold requirements of Appendix FM-SE and the specified evidence requirements.
7. In granting permission to appeal, Judge Nicholson pointed out that whilst neither the grounds of appeal to the First-tier Tribunal, nor those to the Upper Tribunal referred to it, the provisions for the entry of children under Appendix FM relate to the children of persons with limited leave, not to the children of British citizens. The application should have been considered by the Secretary of State and the First-tier Tribunal under paragraph 297 of the Immigration Rules. That provision was not drawn to the attention of Judge Wilson.
8. The preamble to Appendix FM states that this route is for those seeking to enter or remain in the UK on the basis of their family life with a person who is a British citizen, is settled in the UK, or is in the UK with limited leave. However, the section of Appendix FM in relation to family life as a child states, "This route is for a child whose parent is applying for entry clearance or leave, or who has limited leave, as a partner or parent. For further provision on a child seeking to enter or remain in the UK for the purpose of their family life see Part 8 of these Rules."
9. Whilst the appellant's mother did have limited leave at the time of the decision, the application was made on the basis of the appellant's relationship to her father, a British citizen. The preamble to paragraph 297 explains that it sets out the requirements for indefinite leave to enter the UK as the child of a parent, parents or a relative present and settled or being admitted for settlement in the UK. Obviously, the appellant's father is and was at all material times settled in the UK.
10. In the circumstances, the debate about the financial threshold under Appendix FM and whether the specified evidence requirements had been met was in error of law. The requirements under paragraph 297 do not include a specific financial threshold but the lower one of adequate maintenance.
11. It follows that the decision of the First-tier Tribunal Judge was in error of law and cannot stand.
12. In setting aside that decision and in the remaking of the decision, Mr Holt

pointed out that since this appeal was lodged, the appellant, along with her four siblings, has made a further application for entry clearance under Appendix FM. This application was also refused, on 30.10.15, but on different grounds to the 2014 decisions. In particular, the financial threshold was not relied on by the Entry Clearance Officer.

13. It is unfortunate for the appellant that it is now approaching two years since she made her application for entry clearance. However, I cannot see a way to remake the appeal by simply allowing it on the basis that either the financial requirement is that of adequate maintenance, or on the basis that the financial threshold was not relied on in the later decision. Paragraph 297 of the Immigration Rules includes other features such as adequate accommodation and whether the child, who has now reached her majority, is living an independent life; although those issues should have been decided on the basis of the circumstances prevailing at the date of the refusal decision. Those are matters that have not necessarily been considered by the Entry Clearance Officer.
14. It seems to me that the decision of the Entry Clearance Officer was not in accordance with the law and that the appropriate course is to remake the decision in the appeal by allowing it to the limited extent that the decision of the Entry Clearance Officer was not in accordance with the law and that it remains for the Entry Clearance Officer to make a decision in accordance with the law.

Conclusions:

15. The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law such that the decision should be set aside.

I set aside the decision.

I re-make the decision in the appeal by allowing the appeal on the limited basis only that the decision of the Entry Clearance Officer was not in accordance with the law and it remains for the Entry Clearance Officer to make a decision in accordance with the law.



Signed

Deputy Upper Tribunal Judge Pickup

Dated

21 February 2017

Anonymity

I have considered whether any parties require the protection of any anonymity direction. No submissions were made on the issue. The First-tier Tribunal did not make an order.

Given the circumstances, I make no anonymity order.

Fee Award **Note: this is not part of the determination.**

In the light of my decision, I have considered whether to make a fee award.

I have had regard to the Joint Presidential Guidance Note: Fee Awards in Immigration Appeals (December 2011).

I make no fee award.

Reasons: The decision on the application remains outstanding.



Signed

Deputy Upper Tribunal Judge Pickup

Dated

21 February 2017