



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Numbers: HU/00339/2017  
HU/00340/2017, HU/00341/2017

**THE IMMIGRATION ACTS**

Heard at Liverpool Civil & Family Court Centre  
On 27<sup>th</sup> June 2018

Decision & Reasons Promulgated  
On 8<sup>th</sup> August 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

SS (FIRST APPELLANT)  
MM (SECOND APPELLANT)  
ASR (THIRD APPELLANT)  
(ANONYMITY DIRECTION MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellants: Mr Nazakat Khan (Solicitor)  
For the Respondent: Miss H Aboni (Senior HOPO)

**DECISION AND REASONS**

1. This is an appeal against the determination of First-tier Tribunal Judge Pickup, promulgated on 14<sup>th</sup> August 2017, following a hearing at Bradford on 31<sup>st</sup> July 2017. In the determination, the judge dismissed the appeal of the Appellants, whereupon the Appellants subsequently applied for, and were granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

## **The Appellants**

2. The Appellants are all citizens of Pakistan. They were born on 15<sup>th</sup> October 1989, 19<sup>th</sup> June 2014 and 6<sup>th</sup> July 2012, respectively. They are family members of [MR], of whom the first Appellant is the wife, and the remaining two Appellants are the children. The first Appellant, the wife, entered the UK on 20<sup>th</sup> October 2011 as the partner of a Tier 1 (Post-Study) Migrant. She had valid leave until 2<sup>nd</sup> October 2016. Thereafter, on 30<sup>th</sup> September 2016, the Appellants applied for leave to remain on human rights grounds. On 6<sup>th</sup> October 2016 their applications were refused.

## **The Basis of Refusal**

3. The essence of the refusal lies in the Respondent's contention that the Appellants have not been able to demonstrate that the financial income thresholds set out in Appendix FM were met, with supporting specified evidence as required under Appendix FM-SE. In the alternative, the Appellants did not meet the requirements of EX1 as the Secretary of State was not satisfied that there were insurmountable obstacles to family life continuing as a partner outside the UK, as defined under EX2. Moreover, the first Appellant had not been able to demonstrate very significant obstacles for integration under paragraph 276ADE(1)(vi).

## **The Appellants' Case**

4. The Appellants have maintained that their sponsoring head of the family, [MR], has spent thirteen years in the UK, his wife was expecting a further child, and he had ample money in the bank, a thriving business, and owned several properties, such that it was simply not conceivable that he would not be able to meet the financial requirements threshold in the Immigration Rules. His business accounts were produced from September to September, and these were accepted by the judge who heard the appeal. The judge had also stated that he would have to accept that some of the requested information was now within the Appellants' bundle.

## **The Judge's Findings**

5. The judge, however, refused the appeal on the basis that some of the items that were required to be shown did not appear to be available even now, in the Appellants' bundle. For example, the savings account, submitted by the sponsoring husband of the first Appellant, did not show the same level of savings throughout the necessary six month period. Second, whilst the unaudited accounts had been provided, there was no accountant's certificate of information from an accountant who was a member of a recognised UK supervisory body. Third, there was no current appointment report from Companies House, as requested in the letter of 17<sup>th</sup> November 2016. Fourth, it was not clear to the judge that the requested CT600 company tax returns had been provided, or that the documents at A169 did appear to acknowledge HMRC receipt of CT600 tax returns for the company. Finally, whilst the bank statement showed receipt of income from the business, this income did not match the dividend statement at A162 showing £26,971 payable. The payments of £500 per week did not match this statement.

6. The judge went on to say that given that the Sponsor and the Appellants were adamant that they can meet the requirements of the financial threshold, there was no reason why a further application should not be made for the first Appellant, taking care to address the specified evidence requirements of the Rules (paragraph 33).
7. The appeal was dismissed.

### **Grounds of Application**

8. The grounds of application state that by the time of the hearing, the Appellants were able to meet the requirements of the Rules, and the judge had acknowledged this, which meant that there was an error of law, given that the judge had to decide in a human rights appeal, the position on the date of the hearing. This was an in-country appeal and a non-point based matter so that under Article 8 ECHR, the relevant date was the date of the hearing, and not the date of the application. On the date of the hearing, the Appellant's own income (as set out at pages 54 to 62) showed her income at £13,392, and there were savings of £50,000 for the last six months. Second, even if the position is taken at the date of the application, and the Secretary of State's decision of 16<sup>th</sup> December 2016 is to be looked at, there were still savings of £50,000 in the Sponsor's bank account, for the relevant period from 5<sup>th</sup> April 2016 to 15<sup>th</sup> December 2016. The Appellant had also maintained more than £22,000 balance in the Sponsor's account for 178 days from 5<sup>th</sup> April to 30<sup>th</sup> September.
9. Permission to appeal was granted on 12<sup>th</sup> February 2018.

### **The Hearing**

10. At the hearing before me on 27<sup>th</sup> June 2018, Mr Khan, appearing on behalf of the Appellants, relied upon the Grounds of Appeal. He submitted that he had a bundle dated 22<sup>nd</sup> June 2018 (of 13 pages) which clarified the position even more. Mr Khan was at pains to emphasise that the judge was only interested in looking at the evidence at the date of the application, and notwithstanding Mr Khan's protestations to the contrary, the judge did not consider the evidence on the day of the hearing itself. Mr Khan submitted that this was evidently plain from what the judge stated at paragraphs 25 to 26 of the determination. In any event, there was at page 281 of the bundle a letter from the HMRC requesting detailed information and at page 285 that information was provided by the Appellant, and this was prior to the date of the decision itself. The Secretary of State had written on 17<sup>th</sup> November 2016. The Appellants provided details of the Sponsor's pay slips, employer, letters, detailed bank statements from September 2011 to 2016. Indeed, the Secretary of State was provided with full company tax returns for the full financial year from February 2015 to February 2016.
11. For her part, Miss Aboni, representing the Secretary of State, submitted that the judge's determination was clear and well structured. First, it had been accepted by the judge that "some of the requested information is now within the Appellants' bundle" (paragraph 23). Second, however, it was equally accepted that "some of the items required do not appear to be available even now" (paragraph 25). This was in fact accepted by Mr Khan who had been appearing also on behalf of the Appellants below

because he had said that “the savings account submitted did not show the same level of savings throughout the necessary six month period” (paragraph 25(i)). Third, the judge had then gone on to consider the position himself in any event at paragraph 25(ii-v). He had found that the documentation did not tally with the assertions that had been made on behalf of the Appellants.

### **Error of Law**

12. I am satisfied that the making of the decision by the judge involved the making of an error on a point of law (see Section 12(1) of TCEA 2007) such that I should set aside the decision and remake the decision. My reasons are as follows. This is a case where the judge observed that the latest bundle for the purpose of the hearing did contain “some of the requested information” (paragraph 23). At the same time, the judge also observed that “some of the items required do not appear to be available even now” (paragraph 25), and this was indeed acknowledged by Mr Khan who appeared below. However, what is significant for the purposes of the appeal, is that the judge *did* then go on to consider the evidence before him in any event. This is set out in the roman numeral subparagraphs at the bottom of paragraph 25. Critical to the Appellants’ claim was the assertion that a request had been made (at page 281) by the Secretary of State on 17<sup>th</sup> November 2016 for documents, and these had then been supplied in exactly the same manner as they had been requested by Whetstone Solicitors on 12<sup>th</sup> December 2016. Here this set out the pay slips for September 2016 to October 2016; the letters of employment from the last employer; the personal current account statement; the company tax return CT600 filled for the last financial year from September 2015 to September 2016. Also included are the unaudited accounts. Moreover, at page 286 there is the savings account showing a balance of £36,918.40. What was required from the Appellants to be shown was just £24,800. The dividend that was shown was £26,971.
13. Second, the judge stated that the request for CT600 company tax returns do not appear to have been provided. However, in the same breath the judge goes on to say that “though documents at A169 and similar appear to acknowledge HMRC receipt of CT600 tax returns for the company”. If one looks at the HMRC letter that appears at A169 dated 3<sup>rd</sup> June 2016, this is in relation to Galaxy Garages Limited, but what is equally clear is that proof of payment is shown at page 245 of the bundle (although not referred to by the judge below).
14. Third, and in the same way, the judge states at paragraph 25(v) that the document at A162 does not match the £26,971 that is meant to be payable, but there is confirmation at page 162 by DBF Associates (Chartered Accountants) of this fact.
15. Accordingly, since the Appellant only had to satisfy the requirement of the Rules on the balance of probabilities test, that test had been met, and it had been met on the date of the application, as well as on the date of the hearing.

**Remaking the Decision**

16. I have remade the decision on the basis of the findings of the original judge, the evidence before him, and the submissions that I have heard today. I am allowing this appeal for the reasons that have been set out above.

**Notice of Decision**

17. The decision of the First-tier Tribunal involved the making of an error of law such that it falls to be set aside. I set aside the decision of the original judge. I remake the decision as follows. This appeal is allowed.

18. An anonymity direction is made.

**Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008**

Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date

Deputy Upper Tribunal Judge Juss

3<sup>rd</sup> August 2018

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

As I have allowed the appeal and because a fee has been paid or is payable, I make a fee award of any fee which has been paid or may be payable.

Signed

Date

Deputy Upper Tribunal Judge Juss

3<sup>rd</sup> August 2018