



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: HU/00345/2017

**THE IMMIGRATION ACTS**

Heard at: Field House  
On: 4 May 2018

Decision and Reasons Promulgated  
On: 23 May 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE CHANA

Between

IRINE FOSUAA ADOOM  
(ANONYMITY DIRECTION NOT MADE)

Appellants

and

THE ENTRY CLEARANCE OFFICER-ACCRA

Respondent

**Representation:**

For the Appellant: Sponsor

For the Respondent: Ms Z Kiss, Senior Presenting Officer

**DECISION AND REASONS**

1. The appellant is a citizen of Ghana born on 27 September 1985. She appealed against the decision of the respondent dated 25 November 2016 to refuse to grant her leave to enter the United Kingdom pursuant to paragraph EC- P. 1. 1 of Appendix FM of the immigration rules. First-tier Tribunal Judge Somal in a decision dated 18 August 2017 dismissed the appellant's appeal under the Immigration Rules.

2. Permission to appeal was granted by First-Tribunal Judge Brunnen dated 14 March 2018 stating that it is arguable that the Judge made an error by not appreciating that he was entitled to consider evidence after the date of decision even if it is produced at the appeal stage.
3. The First-tier Tribunal Judge made the following findings which I summarise. The appellant is required to produce specified documents under Appendix FM with the application. The rules are specific, and the appellant failed to submit 12 months of personal bank statements for her sponsor, an employment letter and payslips to show the sponsor's income from salaried employment.
4. The documents specified for self-employment were not submitted with the application including 12 months of personal bank statements, annual audited accounts or a certificate of VAT registration. Failure to provide the necessary documents means the appeal must fail under the immigration rules as the financial requirement has not been met. The appellant can also not meet the English language requirement of the immigration rules and the relevant date as she took her test after the decision at a provider approved by UKBA.
5. There are no compelling circumstances which require consideration under Article 8 of the European Convention on Human Rights. The inability of the appellant to meet the immigration rules is a weighty factor and the maintenance of effective immigration controls is in the public interest. The sponsor is a British citizen but there is nothing to prevent him visiting Ghana to see the appellant and making a fresh application with the specified evidence.
6. The Judge dismissed the appeal under the immigration rules and under Article 8 of the European Convention on Human Rights
7. The grounds of appeal argue the following which I summarise. The appellant did include all relevant documents required for sole trader self-employment under appendix FM-SE. furthermore, 12 months of bank statements were submitted with the appeal bundle as confirmed in paragraph 9. The documents clearly show counter cash deposits since the sponsor only receives cash as a private hire driver. The sponsor pays the cash into his current account on a monthly basis amounting to an average of £2500 a month. It is accepted that no cash deposits were made up to the date that the sponsor came to Ghana to spend time the appellant. He has however worked around the clock to make up the deficit of income before and after his visit. She passed the English language test even though it was after the reasons of refusal letter was issued. The immigration rules permit the submission of sub-sequential documents. It is also untrue and unfair to state that the documents specified for the sponsor's self-employment were not submitted with the application. All relevant required documents by Appendix FFM as the sole trader were submitted.

8. The respondent's rule 24 response states the following which I summarise. The respondent opposes the appellant's appeal and submits that the Judge directed himself appropriately. The Judge appropriately found that the appellant could not satisfy the requirements of the immigration rules because the appellant only took the English language test after her application had been refused. It was open to the Judge to find that the appellant could submit a fresh application supported by evidence to demonstrate that she could now meet the rules.

**Findings as to whether there is an error of law in the decision**

9. The Judge in dismissing the appellant's appeal found that the appellant does not meet the requirements of the immigration rules because she has not submitted the specified documents as required under Appendix FM. There is no dispute that the appellant has provided all the documents necessary to satisfy the immigration rules as at the date of the hearing before the First-tier Tribunal.
10. The Judge fell into material error when he found that the appellant had to submit all the necessary documents as required by the immigration rules, as at the date of application. Section 85 (4) of the Nationality, Immigration and Asylum Act 2002 states that the Judge is entitled to consider evidence of any matter relevant to the substance of the decision, including the matter arising after the date of the decision. He was also entitled to consider the appellant's English-language certificate even though the test was not taken after the respondent's decision was made but was submitted to the First-tier Tribunal.
11. The Judge was therefore entitled to consider all the documents placed before him which he failed to do which is a material error.
12. I find that there is a material error of law in the decision of the First-tier Tribunal and I set it aside. I remake the decision and allow the appellant's appeal.

**Decision**

Appeal Allowed

I make a fee order against the respondent of the filing fees.

Signed by

Deputy Judge of the Upper Tribunal  
Mrs S Chana

This 20<sup>th</sup> day of May 2018