



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: HU/01151/2016

THE IMMIGRATION ACTS

Heard at Field House  
On 5 February 2018

Decision & Reasons Promulgated  
On 22 February 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE NORTON-TAYLOR

Between

MD SABIR UDDIN  
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr I Khan, Counsel, instructed by KC Solicitors  
For the Respondent: Mr P Duffy, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge Thomas (the judge), promulgated on 10 April 2017, in which she dismissed the Appellant's appeal. By an application made on 12 October 2015 the Appellant had sought entry clearance to join his spouse in the United Kingdom. The application was refused by the Respondent on 4 December 2015 on the basis that the Appellant could not satisfy the requirements of Appendix FM in relation to the genuineness of the relationship, the financial requirements, and the adequacy of accommodation.

The Judge's decision

2. The judge found that the Appellant's relationship with his wife was in fact genuine and subsisting, and that there was adequate accommodation in place. However, she also found that the Appellant could not meet the financial requirements under

Appendix FM with reference to Appendix FM-SE. Specified evidence had not been provided at any stage. The judge went on to look at Article 8 outside the context of the Rules but concluded (at least implicitly) that there were no exceptional and/or compelling circumstances in the case.

### **The grounds of appeal and grant of permission**

3. The grounds assert that the judge should have looked at the evidence as a whole, not just the documents provided by the Appellant. It is said that the judge did not deal adequately with the fact that the sponsor had received some of her wages in cash and that she had significant savings. It is also said that the judge erred in concluding that the Appellant could make a fresh application for entry clearance. It is said that the costs involved and any delay resulting from another refusal would be disproportionate. In granting permission, First-tier Tribunal Judge Gillespie noted that the application had been two days out of time. However he regarded this delay as being minimal and there was sufficient merit in the grounds for time to be extended and permission to be granted.

### **The hearing before me**

4. Mr Khan was entirely realistic in respect of his submissions before me. He accepted that the requirements of Appendix FM-SE had not been met due to the absence of certain specified evidence. However, he submitted that the judge had erred in respect of the consideration of Article 8 outside the scope of the Rules. He suggested that once the judge found there to be a genuine and subsisting relationship he should then have considered whether the costs and delays in making a fresh application would have had a disproportionate impact on that relationship. He also noted that it seems as though there was in fact enough income to have met the minimum income threshold. He submitted that the judge had failed to engage adequately with the proportionality exercise.
5. Mr Duffy submitted that all of the conclusions reached were entirely open to the judge. An individual could not obviate the need to meet the relevant Rules when making an application for entry clearance. There was nothing extra or exceptional in this case. Mr Duffy noted that the sponsor appeared to have £10,000 in savings and this was relevant to the ability to make a fresh application.

### **My decision on error of law**

6. As I announced to the parties at the hearing, I conclude that there are no material errors of law in the judge's decision. My reasons for this are as follows.
7. It was entirely open to the judge to conclude that the requirements of Appendix FM-SE had not been met. It is clear that a number of relevant items of evidence had simply not been submitted at any stage. Mr Khan has candidly accepted this point.

8. It was in turn open to the judge to conclude that the Appellant could not succeed in respect of the Article 8-related Rules.
9. This in turn was clearly going to have a significant impact on the judge's assessment of Article 8 outside the context of the Rules. Although the judge could perhaps have expressed herself with greater clarity in subsequent paragraphs, it is clear enough in my view from her assessment of Article 8 outside the context of the Rules that she has taken all relevant matters into account. She has accepted that there was family life and noted that the Appellant had failed to meet the requirements of the Rules. Although not expressly stated, it is implicit in her decision (and clear from the current state of the law), that a failure to meet the Rules is relevant to an assessment of proportionality. The Rules are the Rules, and they cannot be obviated or circumvented unless strong reasons are put forward. It is clear enough from the judge's decision and the evidence that I have seen on file that there were no "exceptional", "compelling", or "very strong" reasons for the Article 8 claim to succeed once the Rules could not be met. There were no health issues, children, or other particular circumstances existing in this case. On the face of it there was nothing preventing the making of a fresh application. The conclusion that such an application could be made was one to which the judge was entitled to come to.
10. There are no errors and the decision of the First-tier Tribunal shall stand.
11. It is open to the Appellant to make a fresh application in the knowledge that the judge has found that his relationship with his wife is genuine and subsisting and that adequate accommodation would be in place. Those two findings would be favourable to a future application. I also note the existence of substantial savings on the Appellant's wife's part. These two could be utilised in the making of a fresh application.

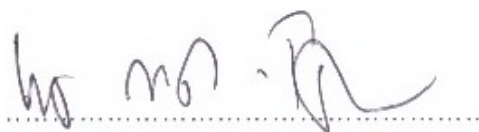
### **Notice of Decision**

**There are no material errors of law in the First-tier Tribunal's decision.**

**The Appellant's appeal to the Upper Tribunal is dismissed and the decision of the First-tier Tribunal shall stand.**

**I make no anonymity direction.**

Signed



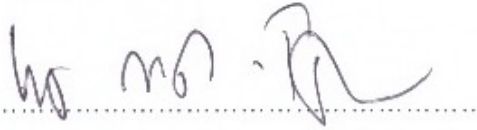
Date: 16 February 2018

Deputy Upper Tribunal Judge Norton-Taylor

**TO THE RESPONDENT**

**FEE AWARD**

No fee award can be made in this case.

A handwritten signature in black ink, appearing to read 'W. Norton-Taylor', written over a horizontal dotted line.

Signed

Date: 16 February 2018

Deputy Upper Tribunal Judge Norton-Taylor