



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Numbers: HU/09072/2016  
HU/09076/2016

**THE IMMIGRATION ACTS**

Heard at Field House  
On 14<sup>th</sup> June 2018

Decision & Reasons Promulgated  
On 26<sup>th</sup> June 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE KELLY

Between

PARVANEH HASSANZADEH  
SINA HASSANZADEH  
(ANONYMITY DIRECTION NOT MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellants: Mr G Goddard, Legal Representative, Southwark Law Centre  
For the Respondent: Ms K Pal, Home Office Presenting Officer

**DECISION AND REASONS**

1. This is an appeal by Parvaneh Hassanzadeh and Sina Hassanzadeh against the decision of First-tier Tribunal Judge Peter-John White to dismiss their appeals from the decision of the Entry Clearance Officer to refuse them entry clearance to the United Kingdom as respectively the wife and son of Mr Ibrahim Hassanzadeh. Both the Appellants and Mr Hassanzadeh (who I shall refer to hereafter as “the Sponsor”) are

citizens of Iran. The Sponsor has been settled in the United Kingdom for many years now and is in full-time employment.

2. The date of the Entry Clearance Officer's refusal was 25<sup>th</sup> February 2016. The reason for refusal under the Immigration Rules was that the appellants had failed to submit the specified evidence required under Appendix FM-SE as proof of the Sponsor's pre-application earnings. I am told by Mr Goddard that this is challenged. However, that challenge was not ventilated before the First-tier Tribunal and it is not therefore relevant to the hearing today.
3. One might therefore have expected that the documents that had allegedly been omitted from the applications would have been submitted (or re-submitted) with the appeal bundle. As Judge Peter-John White observed, had this been done the difficulties that have since arisen would not have occurred and it is almost certain that these appeals would have been allowed in the First-tier Tribunal. However, for reasons unknown, the documents submitted on appeal related to a period that not only post-dated the application but also post-dated the decision to refuse entry clearance. Those documents appear to show that the Sponsor was earning in the region of £30,000 a year during the post-decision period that they cover.
4. Accordingly, the first issue was whether the Tribunal could take account of the above documents in determining whether the Appellants met the requirements of the Immigration Rules. The ground upon which permission to appeal has been granted is that the judge made an error of law in determining that issue. The analysis is contained within paragraph 11 of the Decision:

"Although the specified evidence must cover the period leading up to the date of application there is no bar on late production of evidence. The Appellants could, assuming the documentation exists, have provided for the appeal the six months of bank statements and payslips which should have been with the application. For whatever reason, they have not done that. The payslips and bank statements produced to me, both in the bundle and in the folder, relate to a period from November 2016 to June 2017, long after the application and decision. Mr Fouladvand made a submission that I could treat the Rule as satisfied on the basis of this evidence, covering a later period, but he cited no authority for that bold submission. The Rule is quite express in requiring the evidence to relate to the period up to the date of application and I am in no doubt that it cannot be satisfied by evidence showing an income level a year later. Accordingly I find that the requirements of E-ECP.3.3 and E-ECC.2.2 are not shown to be met."

5. It is clear from the above that the Appellants' argument in the First-tier Tribunal was that they had now demonstrated that they met the requirements of the Rules and that if followed from this that their appeals should be allowed.
6. There is no longer jurisdiction to allow an appeal where the Respondent's decision "is not in accordance with immigration rules". It nevertheless seems to me that given the nature of Appendix FM, which purports to provide a complete code under Article 8 in family cases (see Gen.1.1), it would indeed follow that if its requirements were met the appeal would fall to be allowed on the ground that the Respondent's decision was incompatible with the right of the Appellants to respect for their family life. The

question of whether the post-decision evidence was capable of meeting the requirements of the Rules was thus critical to the outcome of the appeal at the first stage of the Article 8 analysis.

7. The judge's self-direction concerning post-decision evidence was, with respect, outdated. Thus, at paragraph 5, he said:

"The relevant date for my consideration is the date of the decision to refuse, although I may take account of later matters insofar as they cast light on the state of affairs at the date of refusal: see DR (Morocco)\* [2005] UKIAT 00038."

The judge then went on to refer to changes introduced by the Immigration Act 2014. He nevertheless appears to have overlooked the fact that a new approach to post-decision evidence was amongst those changes. The current approach is contained in Section 85(4) of the 2002 Act (as amended) which reads as follows:

"On an appeal under Section 82(1) against a decision the Tribunal may consider any matter which it thinks relevant to the substance of the decision, including a matter arising after the date of the decision."

This approach applies equally to both in-country and out-of-country appeals. The judge's self-direction relating to post-decision evidence did not therefore accurately reflect the current law. The remaining question is whether that error was material to the outcome given the specific facts of this appeal.

8. The argument in the Grounds of Appeal to the Upper Tribunal is that Section 85(4) should have been applied to the Appellants' post-decision documents and that the Appellants would thus have been able to show that they met 'specified evidence' requirements of Appendix FM-SE. This seems to me to be an essentially circular argument for the following reasons.
9. Although Section 85(4) clearly and expressly states that the Tribunal may have regard to matters arising after the date of decision, this is subject to the important qualification that the evidence in question is "relevant to the substance of the decision". The substance of the Respondent's decision was that the documents submitted with the application did not satisfy the requirement for documents that related to the Sponsor's pre-application earnings. Section 85(4) was thus incapable of assisting the Appellants at the first stage of the analysis under Article 8 of the Human Rights Convention.
10. The judge then went on to consider Article 8 outside the Rules. At this point the argument put by Mr Goddard is subtly different from that which was put in the First-tier Tribunal. It may be summarised as follows.
11. Once the judge moved on to consider the appeal outside the Rules, the requirement for the evidence to relate to the Sponsor's pre-application earnings was no longer relevant. Accordingly, even if the judge was right in holding that the Appellants could not succeed under the Rules, he nevertheless erred in failing to treat the post-decision documentation as a weighty consideration in the wider Article 8 assessment (outside the Rules) given that these showed that the Sponsor earned a significantly larger sum than that required by the Rules. The weight attaching to the public interest in excluding the Appellant from the United Kingdom was thus diminished.

12. Strictly speaking, the above argument is not one for which permission to appeal has been granted. I have nevertheless considered and rejected it on two discrete grounds.
13. Firstly, as a matter of principle, if the argument is right then it allows applicants to bypass what would otherwise be the necessity for making a fresh application under the Immigration Rules (together with payment of a substantial fee) by simply appealing against a decision that was considered under the Rules upon an entirely different evidential basis. In my judgement, the purpose of the appeal process is to provide a mechanism for correcting errors in the original decision that may otherwise have led to a breach of a person's fundamental human rights. Its purpose is not to provide a cheap alternative to making a fresh application with a view rectifying the errors that were made in the original application.
14. Secondly, I do not accept that the ability of the Sponsor to provide financial support for the Appellants was of itself a weighty factor in the assessment of their fundamental human rights. Although it is a non-exhaustive list, Section 117B of the 2002 Act requires the Tribunal to have regard to the factors therein listed. One of those factors is that it is in the public interest for those wishing to live in the United Kingdom to be financially self-sufficient. It is moreover well-established law, as the judge noted at paragraph 15, that financial self-sufficiency is an essentially neutral factor. What the judge said was this:

"I remind myself of the provisions of Section 117B of the 2002 Act, insofar as they bear on entry clearance rather than removal cases. The maintenance of immigration control is in the public interest and these Appellants fail, in the way described to meet the requirements of the Immigration Rules. It is in the public interest that applicants speak English and be self-sufficient, but even where those are shown they are not positive reasons for a grant of leave."

That was an entirely accurate statement of the law and it in my judgement suffices to dispose of Mr Goddard's argument that the judge ought to have placed favourable weight upon the evidence of the Sponsor's post-decision financial position.

15. I am therefore satisfied that, apart from the matter that I mentioned at paragraph 6 above, there was no error of law in the approach that the judge took to these appeals. I am equally satisfied that the judge's outdated self-direction to post-decision evidence had no bearing upon the outcome of the appeal.

### **Notice of Decision**

The appeals are dismissed

No anonymity direction is made.

Signed

Date: 25<sup>th</sup> June 2018

Deputy Upper Tribunal Judge Kelly