



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

**HU/07743/2019 (P)**

THE IMMIGRATION ACTS

**Decided Under Rule 34  
On 10 August 2020**

**Decision & Reasons Promulgated  
On 17 August 2020**

Before

**UT JUDGE MACLEMAN**

Between

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

and

**SANEEYA KAMIL QURESHI**

Respondent

**DETERMINATION AND REASONS (P)**

1. Parties are as above, but the rest of this determination refers to them as they were in the FtT.
2. The appellant is a citizen of India, born on 30 July 1988. On 18 February 2019, she applied for leave to remain in the UK, based on her marriage to Mohammad Majid Malik. The respondent refused that application on 8 April 2019, because the appellant had been in the UK without leave since 22 February 2014, and there were no reasons to allow the appeal outside the rules.
3. The application met the requirements of the rules, apart from the immigration status requirement.

4. FtT Judge Howorth allowed the appellant's appeal by a decision promulgated on 1 August 2019. The sponsor's circumstances at the time of the hearing in the FtT did not enable the appellant to meet the financial requirements, but the judge at [44] thought it very likely that would change in the very near future, and at [47] found it disproportionate to expect her to leave the UK to apply from India.
5. The SSHD appealed to the UT. In a decision promulgated on 10 February 2020, Deputy Judge I A Lewis did not uphold ground 1, on likely ability to meet the financial requirements; was reluctant to set aside on ground 3, on the significance of the appellant's care for her mother-in-law; but upheld ground 2, on the proportionality of being required to apply from abroad. The decision was retained in the UT to be remade:

"on the narrow issue ... of article 8 in the context of the appellant returning to India to apply ... to return ... as a spouse".
6. The case has been transferred for completion of that decision by another judge, or judges.
7. The UT issued directions, dated 31 March 2020, with a view to resolving the case without an oral hearing, observing that it seemed unlikely that the essential facts would be in dispute, and that the case turned on applying *Chikwamba* and subsequent authorities to those facts.
8. In a response, dated 17 April 2020, the respondent argues that the appellant has not shown evidence of the sponsor's income and that even if she did, that should form the basis of a separate application from outside the UK.
9. On 6 May 2020, the appellant filed a response, including evidence of the sponsor's income from November 2019 to April 2020.
10. The UT issued further directions, dated 26 June 2020, giving both parties the chance to submit further, and seeking the SSHD's position on the documents submitted.
11. In a response, filed on 18 July 2020, the appellant says that she meets the requirements of Appendix FM, based on the sponsor's salary being more than adequate; and argues further on family circumstances in the UK, and difficulties in India. She refers also to current problems arising from the pandemic.
12. In a response, dated 21 July 2020, the SSHD says that the appellant has still not submitted "all the specified evidence" to meet the requirements of Appendix FM, and maintains her position that even if the evidence does meet those requirements, the appellant should apply again from outside the UK.
13. The appeal may now be decided fairly and justly, in accordance with rules 2 and 34, on the written materials filed.

14. The appellant has not specified precise compliance on financial support, at a date beyond her original application, nor with the further requirement to show compliance by specified documents.
15. It would be impossible to show literal compliance at any later date, because the rules in Appendix FM-SE require that to be done by documents submitted with the application.
16. In this case, however, the appellant complied with both financial and evidential requirements in her application, which failed for other reasons. By reference to more recent evidence, the SSHD simply says, rather vaguely, that the appellant has not submitted all evidence required.
17. It appears that apart from a short interruption prior to the hearing in the FtT, the sponsor's finances have generally been adequate to support an application.
18. On this point, the SSHD essentially seeks to renew ground 1, which she failed to establish at the "error of law" stage.
19. It carries some weight in the appellant's favour that the original application would have succeeded on all aspects, but for the immigration status requirement.
20. As an overstayer for 5 years, the appellant's immigration history is adverse, although not among the worst. This carries some weight against her.
21. Muslims face discrimination and difficulty in India, but not to the point that the appellant could not return there, even temporarily, being Muslim. Her submissions on this aspect are exaggerated. This does not contribute anything significantly in her favour.
22. The appellant's submissions about her contribution to her mother-in-law's care are also exaggerated. She is not the only or even principal carer, and this matter could be coped with in her absence. However, there is no reason to doubt that she makes a useful contribution, and is a valued member of the wider family, so this carries some weight in her favour.
23. Circumstances now are different from those applying when the application was made. Even without specific evidence from either side, it is within judicial knowledge that administrative delays are greater, and that travel to and residence in India is difficult to arrange, more expensive, carries an element of health risk, and is generally ill-advised, unless for strong reasons.
24. It might be a fine question whether it is proportionate to expect the appellant to make a fresh application from within the UK, coupled with a request to waive the rule on immigration status; but the SSHD has not taken that "intermediate" point, and it is undesirable to multiply and prolong procedure.

25. There are good reasons of public policy underpinning the rules about when applications must be made from abroad. However, looking at all the above circumstances, I find that on balance it is not, at this date, reasonable to require the appellant to make a fresh application, which is likely to succeed, from outside the UK.
26. The decision of the FtT has been set aside. The decision substituted is that the appeal, as brought to the FtT, is allowed.
27. No anonymity direction has been requested or made.

Hugh Macleman

UT Judge Macleman  
10 August 2020

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#### NOTIFICATION OF APPEAL RIGHTS

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within the **appropriate period** after this decision was **sent** to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent:
2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically)**.
3. Where the person making the application is in detention under the Immigration Acts, **the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically)**.
4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days (10 working days, if the notice of decision is sent electronically)**.
5. A "working day" means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.
6. The date when the decision is "sent" is that appearing on the covering letter or covering email.