



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-005677

First-tier Tribunal No: HU/52242/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:

24th October 2023

Before

UPPER TRIBUNAL JUDGE LANE

Between

QURAH TUL AIN

(NO ANONYMITY ORDER MADE)

and

Secretary of State for the Home Department

Appellant

Respondent

Representation:

For the Appellant: Mr Greer

For the Respondent: Mr McVeety, Senior Presenting Officer

Heard at Manchester Civil Justice Centre on 11 October 2023

DECISION AND REASONS

1. The appellant is a citizen of Pakistan who was born on 5 December 1987. She appealed to the First-tier Tribunal against a decision of the Secretary of State dated 23 March 2022 refusing her leave to enter the United Kingdom. The First-tier Tribunal, in a decision dated 21 September 2022, dismissed the appeal. The appellant now appeals, with permission, to the Upper Tribunal.
2. The issue in the appeal is succinctly summarised in the grant of permission by Upper Tribunal Judge Canavan at [3]:

In light of the decision in *MM (Lebanon) v SSHD* [2017] UKSC 10 the central public interest consideration is the level of income. The evidential requirements contained in Appendix FM-SE are largely for the administrative convenience of the respondent to assist her in assessing whether a person earns the required income. Although it might have been open to the judge to conclude that the appellant did not meet the evidential requirements, the question of whether the couple nevertheless earned over £18,600, and therefore satisfied the broader public interest consideration, was relevant to the overall balancing exercise under Article 8. It is arguable that the judge failed to make findings in relation to a material consideration when undertaking that assessment [56]-[67].

3. Mr Greer expressed considerable sympathy for the judge who had, in effect, been left, unguided by the appellant's representatives, to consider a large volume of evidence in order to determine whether the provisions of Rules had been met. However, he submitted that that the judge had failed to make clear whether he found that the appellant did or did not have the income which he claimed or whether he failed to meet the specific 'administrative' requirements of Appendix FM-SE. This lack of clarity was, he submitted, particularly evident at [43]:

I find that significant documents required by Appendix FM-SE to be produced in order to rely upon self-employed income have not been provided in this appeal. I find that the Appellant has not provided twelve months of personal bank statements covering the 2020/21 financial year. I further find that there is insufficient evidence presented to show that the Sponsor has met his tax liability on the self-employed income relied upon. I find therefore that the Sponsor's claimed income for the period in question cannot be relied upon as the requirements of Appendix FM-SE have not been met. The Appellant cannot meet the financial eligibility requirement on the basis of her own income alone. I find that the Appellant did not meet the financial eligibility requirement of Appendix FM at the time of the decision under appeal.

Mr Greer submitted that the judge had lost sight of the 'broader public interest consideration' in this human rights (Article 8 ECHR) appeal nor had he considered the evidence as at the date of the hearing before him.

4. Mr McVeety, who appeared for the Secretary of State, agreed with Mr Greer's submission. He accepted that the judge's decision should be set aside and the appeal returned to the First-tier Tribunal for that Tribunal to remake the decision.
5. I find that the decision of the First-tier Tribunal is vitiated by legal error for the reasons advanced at the hearing by Mr Greer. I set aside the decision and return the appeal to the First-tier Tribunal for that Tribunal to remake the decision following a hearing *de novo*.

Notice of Decision

I set aside the decision of the First-tier Tribunal and return the appeal to that Tribunal for it to remake the decision following a hearing *de novo*.

C. N. Lane

Judge of the Upper Tribunal
Immigration and Asylum Chamber

Dated: 11 October 2023