



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: OA/01731/2013

THE IMMIGRATION ACTS

Heard at Stoke  
on 5<sup>th</sup> June 2014

Determination Promulgated  
On 13<sup>th</sup> August 2014

Before

UPPER TRIBUNAL JUDGE HANSON

Between

MUHAMMAD IMRAN  
(Anonymity direction not made)

Appellant

and

ENTRY CLEARANCE OFFICER -ISLAMABAD

Respondent

Representation:

For the Appellant: Mr Khan of SMK Solicitors

For the Respondent: Mr Lister – Senior Home Office Presenting Officer.

DETERMINATION AND REASONS

1. This is an appeal against a determination of First-tier Tribunal Judge Pooler promulgated on 12<sup>th</sup> March 2014 following a hearing at Stoke-on-Trent on 3<sup>rd</sup> March 2014, in which he dismissed the Appellant's appeal on both Immigration Rules and human rights grounds.
2. The Appellant, a national of Pakistan born on 1<sup>st</sup> January 1991, applied for leave to enter the United Kingdom as a partner under Appendix FM of the Immigration Rules. The application was refused by an Entry Clearance Officer (ECO) on 20<sup>th</sup> November 2012 as it was found the Appellant had not submitted all the required documents to demonstrate that the sponsor's income was as claimed and, in particular, that no signed contract of employment or letter from the sponsor's employer had been submitted. The application was refused by reference to paragraph EC-P.1.1 (d) of Appendix FM.

3. The Judge set out the correct self-direction in relation to the burden and standard of proof [6] and examined the first ground of challenge before him which related to the claim that the decision was not in accordance with the Immigration Rules. In paragraphs 9 and 10 of his determination the Judge finds:
  9. Mr Khan relied on the letter of 10 December 2012, submitting that it met the requirements of paragraph 2 (b) of Appendix FM. I am however not satisfied that those requirements were met by this letter. The letter did not state the period over which the sponsor had been paid the level of salary relied upon in the visa application. Basic salary was said in the letter to be £18,342.24 per annum and Mr Khan submitted that this was sufficient. It is, in my judgement, not sufficient. In addition, the letter did not state whether the sponsor's employment was permanent, fixed term contract or agency as required by the Rules.
  10. Mr Khan relied on the letter of 8 July 2009 as fulfilling the requirement to provide a signed contract of employment. In my judgment, the letter does not meet that requirement because it did no more than confirm changes in the sponsor's job title, location of work, salary and provision for discretionary commission. It did not set out the terms of the sponsor's employment and in any event it was not signed.
4. The second ground asserted that discretion under the Rules should have been exercised differently but this was dismissed on the basis Mr Khan had failed to identify any paragraph in the Rules under which any such discretion arose.
5. In relation to the human rights appeal Judge Pooler reminded himself of relevant case law of the Upper Tribunal and noted the Appellant placed no reliance upon the High Court decision in MM as he claimed he could meet the requirements of the Rules. In light of the earlier finding that the requirements of the Rules could not be satisfied the Judge considered whether there were any unjustifiably harsh consequences arising from the decision that merited consideration outside the Rules, did not find that any such circumstances had been proved to exist, and dismissed this element of the appeal too. In the alternative, the Judge stated in paragraph 18 that had he approached the Article 8 appeal in the manner recommended in Razgar the decision would have been proportionate in any event.
6. The determination is challenged on grounds asserting the Judge failed to properly consider the evidence filed in relation to the application and failed to exercise discretion or evidential flexibility in relation to the documents provided. The grounds assert the Judge failed to give consideration to the High Court judgment in MM and Ors [2013] EWHC 1900 which is stated to have been

mentioned in the skeleton argument and that a finding there was nothing exceptional about the Appellant's circumstances is wholly unfounded.

### **Error of law**

7. All previous challenges to the lawfulness of the Immigration Rules have failed before the High Court and above. Those Rules set out the criteria that have to be met before an individual is entitled to a grant of leave to enter or remain in the United Kingdom. In respect of spousal applications they include provisions relating to status, language ability, and set out minimal financial requirements. The Rules also set out in clear and unambiguous terms the specific documentary evidence that has to be provided to enable an individual to show that they are able to satisfy the relevant requirements.
8. In this case various assertions have been made in support of the application which were not considered to have been proved by the provision of mandatory documents. The Judge clearly considered the evidence he was asked to consider with the appropriate degree of anxious scrutiny and has given clear reasons for why, in his judgment, the Appellant is unable to meet the requirements of the Rules. Such a finding has not been shown to be perverse, irrational, or contrary to the evidence. Whilst evidence from various other sources may provide an indication of the sponsor's financial situation, unless that information is provided in accordance with the mandatory requirements of Appendix FM the application must fail. The material relied upon by the Appellant has not been shown to have met such requirements and therefore no legal error is proved.
9. In relation to the assertion discretion should have been exercised or that there should have been some flexibility, the reason this application was refused is because the mandatory evidence had not been provided and was absent. If mandatory information is not present it is hard to see how any discretion is relevant. It has not been established that there was any requirement upon the Entry Clearance Officer to contact the Appellant on the facts of this case. Appendix FM (d) (e) provides details of circumstances in which there may be a need to contact an applicant but it has not been established that the decision maker was unaware of such provisions or deliberately ignored them. On the facts of this case it has not been proved any arguable error exists such as to affect the validity of the decision in not exercising discretion and there is no legal error in the Judge considering the evidence in the holistic approach taken.
10. There is no arguable merit in the challenge to the Judge's conclusions regarding Article 8. The High Court decision in MM has now been overturned by the Court of Appeal and the conclusion that no unjustifiably harsh consequences will arise has not been shown to be tainted by any arguable legal error on the basis of the evidence the Judge was asked to consider. No fairness/Rodriguez/Patel arguments are established either.

11. In simple terms, the Appellant failed to properly note the formal requirements for applications in Appendix FM-SE and so failed to ensure that the required information was provided. The decision maker was entitled to arrive at the conclusions he or she did on the basis of the evidence advanced in support of the claim and the Judge was in fully entitled to arrive at the conclusions he did on the facts of this case.
12. If the Appellant wishes to enter the United Kingdom it is open to him to make a fresh application in support of which he can ensure that the mandatory requirements of the Rules are addressed.

**Decision**

13. **There is no material error of law in the First-tier Tribunal Judge’s decision. The determination shall stand.**

Anonymity.

14. The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005. I make no such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed.....  
Upper Tribunal Judge Hanson

Dated the 12<sup>th</sup> August 2014