



**Upper Tribunal  
(Immigration and Asylum Chamber)  
OA/15088/2013**

**THE IMMIGRATION ACTS**

**Heard at Field House  
On September 17, 2014**

**Determination  
Promulgated                      On  
September 18, 2014**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE ALIS**

**Between**

**ENTRY CLEARANCE OFFICER**

Appellant

**and**

**MRS SHOPNA BEGUM**

Respondent

Representation:

For the Appellant: Ms Everett (Home Office Presenting  
Officer)

For the Respondent: Mr Rees, Counsel, instructed by Novells  
Legal Practice

**DETERMINATION AND REASONS**

1. Whereas the respondent is the appealing party, I shall, in the interests of convenience and consistency, replicate the nomenclature of the decision at first instance.

2. The appellant, born July 3, 1985 is a citizen of Bangladesh. On February 20, 2013 she applied for entry clearance as a partner under the Immigration Rules. The respondent refused this application on June 11, 2013 as she was not satisfied she met the requirements of Paragraph EC-P1.1 of the Appendix FM of the Immigration Rules.
3. On July 11, 2013 the appellant appealed under Section 82(1) of the Nationality, Immigration and Asylum Act 2002 arguing she did meet the Rules.
4. The respondent reviewed the grounds of appeal on June 3, 2014 and maintained that the appellant was not exempt from Appendix FM-SE(1)(b) and (c). The respondent maintained her concerns about the English language test and reminded the appellant and any future Tribunal that a free re-test was offered.
5. The matter was listed before Judge of the First-tier Tribunal Phillips (hereinafter referred to as “the FtTJ”) on June 25, 2014. In a determination promulgated on July 9, 2014 she allowed the appeal to the limited extent that it was referred back to the respondent with a direction that the appellant be given a reasonable opportunity to re-take the English test.
6. The respondent appealed that decision on July 16, 2014. Permission to appeal was granted by Judge of the First-tier Tribunal Grant-Hutchinson on July 28, 2014. She found the FtTJ may have erred by failing to have regard to the Immigration Rules on third party sponsorship.

### **ERROR OF LAW ARGUMENTS**

7. Ms Everett relied on the grounds of appeal and submitted that whilst her colleague had conceded a legal point in the first-tier Tribunal this did not absolve the FtTJ from dealing with the law correctly. The decision in Mahad [2009] UKSC 16 pre-dated the new Immigration Rules. These Rules clearly set out what third party sponsorship is permissible and she submitted that Mahad had to be read in light of those Rules. If her submission was accepted it would be inappropriate to remit the matter back to the respondent because the application would be refused for failing to comply with the sponsorship and English language requirements. The sponsorship issue was not a matter that could be rectified under the evidential flexibility provisions because the Rules were not capable of being met at the date of decision.

8. Mr Rees argued the respondent had conceded the issue on maintenance and that was the end of the matter. The FtTJ was fully aware of the financial circumstances and had allowed the evidence as the Rules are not as strict as statute. To allow the respondent to raise this issue was giving them “a second bite of the cherry”.

### **ERROR OF LAW ASSESSMENT**

9. I was helped greatly by both representatives in this appeal. At the original hearing the original representatives (Mr Rees and Mr Singh) relied on the decision of Majad and made no reference to the Immigration Rules and in particular Paragraph A1.1(b) of Appendix FM-SE.
10. Both representatives today agreed that the Rules on third party sponsorship are set out in the Rules and both recognised that Majad pre-dated the new Immigration Rules.
11. Mr Rees accepted that at the date of decision the appellant could not meet the maintenance requirements of paragraph A1.1(b) of Appendix FM-SE. I indicated that the FtTJ could not simply overlook these Rules as they are Rules that govern immigration applications.
12. I am satisfied that where a judge erroneously applies the law it is for the Upper Tribunal to correct the position. I therefore uphold the respondent’s submission that the FtTJ erred in her approach to the issue of maintenance.
13. The FtTJ required the respondent to review the decision and allow the appellant time to take a further test. I am satisfied that as both the English language and maintenance requirements were not met then the decision to return the case to the respondent should also be set aside.
14. I asked Mr Rees whether he wished to argue article 8 before me in light of my findings and having regard to the Immigration Act 2014. After a brief adjournment he confirmed he did not and indicated the appellant would submit a fresh application as it seemed she would now meet the Rules once the English language test had been secured.

15. Mr Rees did indicate that the appellant had experienced difficulties taking the test in Bangladesh and had been told to go to Delhi, India. I found this an extraordinary set of circumstances but advised this was not something I had any jurisdiction over.

**DECISION**

16. There is a material error of law and I set aside the original decision.
17. I dismiss the appeal under the Immigration Rules.
18. Under Rule 14(1) The Tribunal Procedure (Upper Tribunal) Rules 2008 (as amended) the appellant can be granted anonymity throughout these proceedings, unless and until a tribunal or court directs otherwise. No order has been made and no request for an order was submitted to me.



Signed:

Dated:

Deputy Upper Tribunal Judge Alis



TO THE RESPONDENT

I do not make a fee award as the appeal is dismissed.

Signed:

Dated:

Deputy Upper Tribunal Judge Alis