



IAC-FH-CK-V1

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

Appeal Number: OA/02262/2014

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 10 August 2015**

**Decision & Reasons Promulgated  
On 18 August 2015**

**Before**

**UPPER TRIBUNAL JUDGE FINCH**

**Between**

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

Appellant

**and**

**JASWAT KAUR  
(ANONYMITY DIRECTION NOT MADE)**

Respondent

**Representation:**

For the Appellant: Mr N. Bramble

For the Respondent: No appearance

**ERROR OF LAW DECISION**

1. The Respondent was born on 4 January 1964, married to a British citizen in India on 19 April 2013. On 11 October 2013 she applied for settlement to join her husband in the United Kingdom. She was refused on suitability grounds on 8 January 2014 because the Appellant had information from HMRC that her husband had not been paid the salary claimed in her application.

2. Her appeal was heard by First-tier Tribunal Judge Majid and he allowed it on 27 February 2015. The Appellant applied for permission to appeal on 6 March 2015 on the basis that the Judge had failed to address the relevant Immigration Rules, had not given any reasons for allowing the appeal and had also failed to consider whether the Respondent and her husband could continue their family life in India. In addition, it was asserted that the Judge had failed to take into account Appendix FM of the Immigration Rules and Section 117B of the Nationality, Immigration and Asylum Act 2002, consider the public interest or conduct a proportionality exercise.
3. Permission to appeal was granted by First-tier Tribunal Judge Cheales on 17 May 2015 on the basis that the Judge had not fully addressed the reasons for refusing the Respondent leave to enter and had not assessed the requirements contained in the Immigration Rules and Section 117B of the Nationality, Immigration and Asylum Act 2002.
4. On 24 July 2015 the Respondent's representatives emailed the Tribunal to inform it that they had discussed the appeal with the Appellant's representative and agreed that the First-tier Tribunal Judge's decision should be set aside on the basis that there had been a material error of law. They also requested that the hearing set down for 10 August 2015 be vacated and the appeal be remitted to the First-tier Tribunal for a re-hearing before a different judge.
5. On 27 July 2015 Upper Tribunal Judge Eshun made an order that the appeal should remain in the list for 10 August 2015 but should be determined on the papers in accordance with the agreement reached by the parties.

#### ERROR OF LAW HEARING

6. There was no appearance on behalf of the Respondent and I considered the appeal on the papers.
7. First-tier Tribunal Judge Majid's decision and reasons was fairly brief but more importantly he failed to make any reference to the relevant parts of Appendix FM and Appendix FM-SE of Immigration Rules or Section 117B of the Nationality, Immigration and Asylum Act 2002 either directly or in substance.
8. He also did not refer to any particular pieces of evidence in what was a substantial bundle of documents which included payslips, bank statements and other documents from HMRC, including a P60 and a summary of tax paid by the Respondent's husband at the relevant time, which potentially contradicted the information supplied to the Appellant.
9. In the light of the substantial and conflicting evidence it was clearly necessary for the First-tier Tribunal Judge to make detailed and careful findings of fact, which he singularly failed to do. At the every most, he said that he had looked at the statements by the Appellant's husband and

step-daughter and had decided that she met all the requirements to join her husband. But even then it was unclear whether he was talking about the Immigration Rules or Article 8 of the European Convention on Human Rights.

10. In addition, he failed to give any detailed reasons for allowing the appeal which took into account relevant and current case law.
11. As a consequence, it is clear that the First-tier Tribunal Judge's decision and reasons contained a number of material errors of law and that a re-hearing is required.
12. However, I am concerned that through no fault of the Respondent and despite submitting a large amount of evidence to the Tribunal, her appeal, although allowed, was ultimately bound to fail given the nature of the First-tier Tribunal Judge's decision and reasons and that she may now have to wait a very long time for her appeal to be relisted.
13. I do not have the jurisdiction to make an order for expedition in the First-tier Tribunal but would hope that any application made for expedition would be successful in the light of the shortcomings in the previous decision and reasons, the age of both the Respondent and her husband and his ill-health.

#### Conclusions:

1. The First-tier Tribunal Judge's decision and findings included a number of material errors of law.
2. The decision by First-tier Tribunal Judge Majid should be set aside in its entirety.

#### Directions

1. The appeal is remitted to the First-tier Tribunal sitting at Taylor House.
2. The appeal is listed for a *de novo* hearing before a First-tier Tribunal Judge other than First-tier Tribunal Judge Majid.

Signed

Date 13<sup>th</sup> August 2015

Upper Tribunal Judge Finch