



IAC-PE-SW-V1

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

Appeal Number: OA/15904/2013

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 21<sup>st</sup> May 2015**

**Decision & Reasons Promulgated  
On 13<sup>th</sup> July 2015**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE BAIRD**

**Between**

**JS  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

**ENTRY CLEARANCE OFFICER - BANGKOK**

Respondent

**Representation:**

For the Appellant: Mr Symes - Counsel

For the Respondent: Mr Clark - Home Office Presenting Officer

**DECISION AND REASONS**

1. This is an appeal by Mrs JS, a citizen of Thailand, born in February 1974. She appeals under Section 82 of the Nationality, Immigration and Asylum Act 2002 against the decision of the Respondent made on 5<sup>th</sup> June 2013 to refuse entry clearance as a partner under Appendix FM of the Immigration Rules. The Appellant is married to PS, a British citizen, born in February 1950. They met in June 2012 and married in Thailand in February 2013.

2. The Appellant's original appeal against the decision of the ECO was refused by First-tier Tribunal Judge Bart-Stewart following a hearing on 4<sup>th</sup> August 2014. The Appellant sought permission to appeal which was granted by First-tier Tribunal Judge Kelly on 26<sup>th</sup> January 2015. On 10<sup>th</sup> March 2015 having heard submissions I found that there was a material error of law in the determination of the First-tier Tribunal. I set that decision aside with no preserved findings of fact. I now proceed to remake the decision.
3. The Entry Clearance Officer (ECO) considered the application in terms of Appendix FM of the Immigration Rules. He noted that the Appellant had applied for a visit visa in 2004 and had made no application since then, either from outside or within the UK. She had admitted that her intention when she came as a visitor was to seek employment in the UK. She admitted that she had stayed in the UK for around two years from 2004 to 2006 and was employed without permission. She left the UK only to re-enter in 2007 and remained here without permission until September 2012. The ECO said he was satisfied that she has used at least one false identity in order to enter the UK on two occasions. He noted that she had sought non-emergency NHS treatment. She explained that whilst she was here between 2007 and 2012 she had a partner who helped maintain her but soon after that relationship broke down she met her current Sponsor, PS, in June 2012. He noted that she had never at any time tried to regularise her immigration status. Her immigration history caused the ECO to doubt the genuineness of the marriage and he expressed the view that she had used the marriage as an attempt to regularise her status here. He therefore refused the application under paragraph EC-P.1.1(c) of Appendix FM of the Immigration Rules. This states:

'EC-P.1.1. The requirements to be met for entry clearance as a partner are that-

- (a) the applicant must be outside the UK;
- (b) the applicant must have made a valid application for entry clearance as a partner;
- (c) the applicant must not fall for refusal under any of the grounds in Section S-EC: Suitability-entry clearance; and
- (d) the applicant must meet all of the requirements of Section E-ECP: Eligibility for entry clearance as a partner.'

He went on to refuse it under S-EC 1.5. Section S-EC sets out the suitability requirements and 1.5 states,

'S-EC 1.5 The exclusion of the applicant from the UK is conducive to the public good because for example the applicant's conduct, (including convictions which do not fall within paragraph S-EC 1.4), character, associations or other reasons make it undesirable to grant them entry clearance.'

4. The ECO also refused the application because he was not satisfied that the Appellant's relationship with the Sponsor is genuine or subsisting or that they intend to live together permanently in the UK. He did find that the financial requirements of Appendix FM are met.

5. The ECO then went on to dismiss the appeal under paragraph 320(11) of the Immigration Rules which is under the heading:

*“Grounds on which entry clearance or leave to enter the United Kingdom should normally be refused”*

Paragraph 11 states:

*“where the applicant has previously contrived in a significant way to frustrate the intentions of the Rules by:*

- (i) overstaying; or*
- (ii) breaching a condition attached to his leave; or*
- (iii) being an illegal entrant; or*
- (iv) using deception in an application for entry clearance, leave to enter or remain or in order to obtain documents from the Secretary of State or a third party required in support of the application (whether successful or not); and*

*there are other aggravating circumstances, such as absconding, not meeting temporary admission/reporting restrictions or bail conditions, using an assumed identity or multiple identities, switching nationality, making frivolous applications or not complying with the re-documentation process.”*

6. In the refusal letter the ECO gave a long list of factors which can amount to “aggravating circumstances” and highlighted the following:

- Previous working in breach of visitor conditions within short time of arrival in the UK (indicating a deliberate intention to work).
- NHS care to which they are not entitled.
- Troublesome or frivolous applications.
- Taking part in a sham marriage or marriage of convenience.

7. The decision was reviewed by the Entry Clearance Manager (ECM) on 30<sup>th</sup> June 2014 and upheld. She noted that no Grounds of Appeal had been submitted with the appeal form.

8. Contrary to what was said by the ECM, Grounds of Appeal were submitted with the appeal form. It is submitted in these grounds that the decision is wrong. It is submitted that discretion should have been exercised in the Appellant’s favour under paragraph 320(11) as the weight of the evidence is contrary to the decision. It is submitted that the ECO has made a factual error in his consideration of the Appellant’s access to NHS medical treatment. She only sought NHS treatment in relation to pregnancy and a miscarriage both of which are classed as ‘Immediately Necessary Treatment’ and therefore available to anyone. All other medical treatment in the UK was received on a private basis.

9. In her statement provided for the appeal the Appellant said the following. Her family were poor. She had two younger sisters and two younger brothers. One of her brothers was killed in a motorcycle accident at the age of 17. At one time her mother left her with her sister in the country while she went to Bangkok for work. She was subjected to abuse by her aunt. When her parents found out how unhappy she was they took her home. She went to school quite a distance away and had to walk there. She often had no food for lunch. She had to do housework and look after her brothers and sisters. She left school when she was 16 because her parents could not afford the fees. She worked hard to study in the evening. She gave birth to her first child when she was 17. The father of the child never wanted anything to do with him and the Appellant continued to live with her parents. She had her second child when she was 19. The father of that child wanted nothing to do with him. She went back to work when the child was about 3 months old and gave her son up to his father's parents who wanted to look after him. She worked as a quality controller for various companies. From 1993 to 1996 she studied part-time and gained a Diploma in Marketing Management and from 1995 to 2004 worked for a German lens factory in Bangkok as a training officer in the Sales and Telemarketing Department and as Assistant General Manager of Production, Planning and Quality Control. She obtained a mortgage and bought a little house in a suburb of Bangkok. In 2004 the family home was repossessed because her father was unable to pay the mortgage. The family were all homeless. She helped her father become a Buddhist Monk. She got some money from a savings and insurance scheme run by her employer and some from her aunt and bought a small piece of land and started to build a house for her family. She worked very hard to help them. They were so poor that they had to partly depend on food from the monks at the local Temple.
10. She had previously applied for a visa with a group of people to visit the UK for a dance demonstration at the Temple but the visas were refused. She then met someone in Thailand who told her that he could arrange for her to travel to the UK. She finds it difficult to talk about this and about her time in the UK as it is very painful. She told the Sponsor and he wrote about it in his statement. She returned to Thailand in late 2006 and then returned to the UK in 2007 as she was desperate to see her boyfriend there. She just turned up on his doorstep. She was very stupid. She regrets this. She broke up with him in 2012 and decided to return to Thailand. She was unhappy being in the UK illegally and wanted to see her sons and her family. She was thinking of becoming a Buddhist nun. She then however met PS in June 2012. They met at the British Museum. They started chatting then went for a coffee. She describes the outings they had. She was a regular visitor at a Buddhist Temple in Wimbledon where she studied and took exams in Buddhism. There are certificates confirming this. She took the Sponsor there to meet the monks and other members of the community. When she met him she was already planning to return to Thailand but soon after she knew that she and the Sponsor had fallen in love. The Sponsor asked her to marry him. She did not marry him to get his money or to get a visa. She wanted someone to love and who would love her. She had always been hurt by men in the past. There was an engagement ceremony at the Buddhist Temple in Wimbledon following their engagement in September 2012. She returned to

Thailand on 4<sup>th</sup> September 2012. The Sponsor flew to Thailand on 24<sup>th</sup> October 2012, was introduced to her family and stayed for four weeks. He returned to the UK on 21<sup>st</sup> November 2012 then to Thailand on 5<sup>th</sup> January 2013 where he stayed until April. They married in February 2013 and had a Buddhist ceremony in March.

11. She goes on to say that the marriage is not sham or one of convenience. They have been living together as a married couple for over two years and will continue to live together permanently as they love each other. She describes their lives together. Her sons are happy with her husband. She and the Sponsor are always in contact. If the ECO had asked for more evidence of contact they could have provided it. She is sorry for what she did when she first came to the UK but she did what she did only because she had to provide for her family in Thailand. She did not use any assumed identities after she arrived in the UK. She always used her own name. Her official records were in her own name such as the NHS, council tax etc. She only saw a GP because she was pregnant. She was never asked to pay for her treatment but would have done so if asked. She did pay for some treatment.
12. I have a statement from the Sponsor. He begins by apologising for the length of it, speaking of the stress that he and his wife have been under since the application was refused. He has elaborated on some factors relative to his wife's life because it was difficult for her. He was a GP for 30 years and retired in September 2012. He describes how he met and married the Appellant.
13. He then responds to the allegations of the existence of "aggravating circumstances". The ECO had relied on the fact that the Appellant "had entered into a relationship with a UK national shortly after a previous relationship broke down". The Sponsor said this is perfectly normal. She had been in an abusive relationship which she had broken off. She was looking for a loving relationship. She had suffered violence. Her ex-boyfriend was using drugs. The Entry Clearance Officer had also relied on the fact that she had "entered into the marriage shortly afterwards". The Sponsor points out that it was seven and a half months after they met that they married. There are social taboos in Thailand about unmarried couples living together. That had to be taken into account. He was the one who raised the topic of marriage not her. She returned to Thailand voluntarily which demonstrates a wish to regularise her immigration status and do everything properly. He goes through all the evidence that he submitted to the ECO of contact between them, submitting that this was adequate to show that they were together and maintaining very regular contact. In addition the covering letter from their solicitor explicitly offered to provide more evidence if required but none was requested and they were not invited for interview.
14. They have lived together as a couple in Thailand since 24<sup>th</sup> October 2012 apart from periods when he had to return to the UK to prepare for and attend court hearings relative to an application for a variation in the maintenance paid to his ex-wife. Since October 2012 he has travelled to Thailand no fewer than six times to live with his wife. He gives the dates. He then lists factors which confirm his commitment to the relationship, such as financial contributions to her home and pursuing the appeal which has been a stressful and expensive process. They have a joint account in

Thailand. They plan to purchase a house together and have made offers on three different houses and three pieces of land since January 2014. They hope to start building a house soon. He is convinced that the Appellant entered the marriage for reasons of love and that her intentions are true and honest. He is a mature GP with over 30 years' experience in reading body language and non-verbal communication and he has never seen any sign that the Appellant's affection for him is not absolutely real and sincere.

15. With regard to the allegation that she was working in breach of visitor conditions within a short period of her arrival in the UK, he said that she was not able to work as she was being held prisoner as a victim of trafficking. Following this she was supported financially by her boyfriend. She did not use multiple false identities. The allegation that she abused NHS care shows a misunderstanding of the NHS Regulations. She never said that she sought non-emergency NHS treatment. She gave no such explanation and none appears on her solicitor's representations. The ECO did not have access to her medical records. The Visa Application Form asks only "Have you ever received medical treatment in the UK" to which she answered "yes". She did not come to the UK with the intention of seeking medical treatment and neither was it non-emergency treatment. The Department of Health Guidance says that GPs have a discretion to register undocumented migrants and at the time the Appellant consulted a GP she was nine weeks pregnant. The guidance is that pregnant women can be asked to pay for their care and maternity care is "immediately necessary" and must not be withheld because a woman is unable to pay in advance. Maternity care includes antenatal care, birth and postnatal care. He gives a list of the various treatments she received from her doctor. These amount to six consultations. Apart from a routine cervical smear and a subsequent bleeding problem she attended for a twisted ankle, swollen lymph glands, a fever and a throat infection for which she was prescribed antibiotics. She was not asked to pay for any of these treatments.
16. With regard to the allegation that she has now made a "troublesome or frivolous application" he submits that is this ridiculous. They took legal advice and were told that she should return to Thailand voluntarily at her own expense and make an application and that is what she did. He then gives examples of evidence of her good character.
17. He says that it would unreasonable to expect him to live permanently in Thailand. He plans to spend about three months of each winter there but the rest of the time in England because he has a son here and an ex-wife who has severe bipolar disorder and is on long term medication. He does not feel able to rely on her as a back-up carer for her son who now lives with him. He gives other reasons why he cannot remain permanently in Thailand, including the fact that he does not speak Thai and is finding it difficult to learn; he feels truly at home in England and loves the countryside and the culture; he has a flat in London which is let and he has to manage; he has close family with health problems.

18. The Sponsor in his statement deals with the Appellant's claim to have been trafficked to the UK. He states that she was a victim of trafficking for sex on her first visit to the UK which may have resulted in post-traumatic stress disorder (PTSD). He believes this explains why she came to the UK a second time. Her previous legal representative advised her against referring to the trafficking in her statement. He says that this is not a fabrication designed to gain the sympathy of the court as the Appellant did not want it to be included in her final statement. She told him very reluctantly about it in May 2013 while in a very distressed state. She was kept locked in a house, her passport was taken from her and when she was taken from the house in a car she was hidden under a blanket. She was released when a client paid her traffickers what she owed them. This sum was apparently £12,000. He tried to get more details from his wife but she refused to speak about it. She was interviewed on the phone on 15<sup>th</sup> June 2013 by a highly experienced interviewer who gave the opinion that she was a victim of trafficking. She is clearly still traumatised by her experience and told him that she had attempted suicide twice in the past ten years, once in the UK and once in Bangkok.
19. He points out that in the refusal letter his assets were given incorrectly as £1,300,000. They are in fact around £700,000 as the ECO failed to deduct his liabilities. He says he is not a millionaire who can throw away money on legal fees and a sham wife.
20. I have a very large bundle of documents, including evidence of the Sponsor's travel to and from Thailand and hotel bookings. I have extracts from his personal diary. I have a very large bundle of records of Skype calls between the Appellant and Sponsor. I have confirmation of the relationship from the Appellant's sister and brother-in-law.
21. With regard to the Appellant's use of medical services whilst in the UK I have her patient records and correspondence relating to her registration with a GP. These records show that she presented at the GP during her pregnancy and antenatal care was planned. A miscarriage is recorded. Essentially she had some common investigative tests and was prescribed antibiotics. There is evidence of dental treatment for which she paid.
22. I have some evidence of the Appellant's education and career in Thailand.
23. The Appellant and Sponsor signed a prenuptial agreement which I mention because it has in the past been referred to by both the Respondent and the Judge of the First-Tier Tribunal, the implication being that it supports the contention of the Respondent that the Appellant married the Sponsor for financial gain. I have read the agreement in its entirety. It notes that the Sponsor was previously married and divorced in 2004 and that he has one son born in 1993 but the Appellant has never been married and has two children born in 1990 and 1991. The agreement was signed on 23<sup>rd</sup> January 2013. Apart from a dowry paid to the Appellant's family in the sum of 550,000 THB (around £10,000) I can see little benefit to the Appellant in the event of a breakdown of the marriage. The agreement provides that each party would separately retain all of his or her rights to his or her separate property listed in an annex to the agreement

and including in the case of PS two homes in the UK worth a total of around £950,000 and a flat in London worth around £272,000. This list also includes his NHS pension and a private pension, his money in the bank and his car. The Appellant's assets are said to be two houses and land in Thailand worth around 1,800,000 THB and a car. Each will be responsible for his or own liabilities. On divorce the parties will have no right against each other for the division of separate property existing before the date of the agreement and during the marriage.

24. I heard oral evidence from the Sponsor who adopted his statement. He said they have now bought a house in Thailand together. He let us listen to some recordings of his Skype conversations with his wife.
25. In cross-examination Mr Clark pointed out to him that his original statements from May 2013 do not mention the trafficking. He asked him if he knew about it at that time. The Sponsor said that it was discussed with the solicitors but it was not put into the statement because his wife was reluctant to talk about it. There was domestic violence at the hands of her boyfriend which was nothing to do with the trafficking. The Judge of the First-tier Tribunal had wrongly conflated the domestic violence and the trafficking. He said that he thinks that when the Appellant came to the UK the first time she did not know she was being trafficked. She thought she was coming to work. He said he had to drag it from her. She just closes up if he tries to mention it. Mr Clark put it to him that she had previously tried everything to remain in the UK so how did he know that she was not just using him. He said their relationship was not too quick. She had in fact had two proposals from other men and had refused. They got married seven months after they met. She was going back to Thailand anyway. She is not desperate to come here. She would happily remain in Thailand but he has a life here.
26. I asked him if he was sure that her love for him was genuine. He said he knows she loves him. They have lived together for two years. He has been having tests for bowel cancer in the UK. He has family here and loves it here. He went through a painful divorce. He is not a stupid man.
27. In his submissions Mr Clark said he would rely on the reasons for refusal letter. He said the suitability requirements contained in Appendix FM are not met. The provisions at para 1.1 are mandatory reasons and 2.1 sets out reasons for which entry clearance *should normally* be refused. This is a mandatory refusal. The Appellant said she was trafficked but in 2004 her intention was to enter the UK illegally. She came for economic reasons. She was working illegally. That is a serious crime. He said I have to look at the previous deceptions in the round. She was prepared to defraud the authorities. Again he relied on the speed of the marriage.
28. With regard to Article 8 Section 117B has to be applied. He relied on the decision **AM (S 117B) Malawi [2015] UKUT 260 (IAC)** and on **Nagre R (on the application of) v Secretary of State for the Home Department [2013] EWHC 720 (Admin)**, paragraphs 39 to 41.



29. Mr Symes provided a skeleton argument in which it is submitted that the marriage has clearly been established as genuine. The Appellant is of good character. She was a victim of trafficking. There is nothing unusual in the history of their relationship.
30. In oral submissions Mr Symes said that the Sponsor is a man of the highest integrity. He is used to evaluating people and should be considered to be a reliable judge of the Appellant's intentions. With regard to the suitability reasons it is a mandatory refusal but it is predicated on a judgment call. There is a credible alternative narrative in this case i.e. that the Appellant was trafficked and abused. She did go back home. There is a history of forced labour and abuse. She suffered domestic violence. With regard to Section 320(11) he referred me to the case law and said that nothing that was relied on by the Respondent would amount to aggravation.

### My findings

31. In this case the burden of proof is on the Appellant and the standard of proof is on the balance of probabilities.
32. There is no doubt that the Appellant spent some years in the UK unlawfully and that she did enter unlawfully twice. The Entry Clearance Officer has refused the application for entry clearance under Appendix FM – on the grounds that the marriage is not genuine and subsisting and on suitability grounds – and under para 320(11) of the Immigration Rules. Both 320(11) and the suitability requirements in Appendix FM refer to 'aggravating circumstances'. The specific grounds relied upon by the Respondent are set out at paragraph 6 above. I shall deal with these one by one.
- Working illegally – there is no evidence that she did this but the Respondent said that she admitted having done so and she had to support her family in Thailand so I accept that she *may* have worked in the UK without permission.
  - benefitting from NHS care to which she was not entitled – I do not accept that she did this. Indeed I think that this aspect of the complaint against her has been not only misinterpreted but exaggerated. It is well known that many people without leave to be in the UK receive NHS treatment because NHS doctors accept them as patients with few or no questions being asked. That is the reality of the situation. In any event I accept that the Appellant initially sought care when she was pregnant. She was entitled to this. She was never asked for payment. If she had been asked I accept that she would have paid.
  - Making a troublesome or frivolous application – the view of PS was that this is a ridiculous accusation. It seems to me that an application can only be described troublesome or frivolous if it is without merit. If there is merit in the application it is neither troublesome nor frivolous. If the marriage is genuine this cannot in this case be a ground for refusal under paragraph 320(11).

- Taking part in a sham marriage or marriage of convenience – again if the marriage is genuine this ground holds no weight relative to 320(11) and ‘aggravating circumstances.

33. There was also an allegation that the Appellant used fake identities in her everyday life in the UK. I do not accept that as true. She came to the UK with the aid of an agent so it would not be surprising if she had false documents provided by him to enable entry to the UK. She would have done as she was told by him. I do not condone that but it is a far cry from using a false ID in the UK to access services here. I do not accept that she did that and no evidence that she did has been produced.
34. I accept that there was at the date of the decision no satisfactory evidence that the Appellant had been trafficked but that more recent evidence from her and her husband gives rise to a strong possibility that she was.
35. With regard to the marriage, at the date of decision the Appellant and sponsor were married and a large bundle of evidence was submitted with the application. There was a statement from the Sponsor and one from the Appellant detailing how they met and the history of their relationship. The Sponsor was clear that it was he who had proposed marriage. He made it clear that he has considerable ties to the UK including a son. He is correct in saying that the Entry Clearance Officer took no account of his liabilities in assessing his worth and it seems to me that he really did not properly read the pre-nuptial agreement. He had a print out of SKYPE calls which I accept is limited evidence of contact but it is evidence and he did have evidence that the Sponsor had spent a lot of time in Thailand. He appears to have given no weight to the fact that the Appellant had returned to Thailand several months before the wedding, shortly after their engagement and that by the date of decision the Sponsor had spent around 4 months in Thailand with the Appellant.
36. Having considered all the evidence I am satisfied that the marriage is genuine. It is of course difficult to make a finding in such cases because the intentions of both parties have to be taken into account. There is no doubt about the feelings of the Sponsor. I had the opportunity of speaking with him twice, at the two hearings before me, and I am satisfied that he genuinely cares for the Appellant and that there are no circumstances under which he would knowingly become involved in any sort of plan for her to gain entry unlawfully or deceitfully to the UK. I have not of course met the Appellant who is in Thailand and unable to give evidence in her own appeal. The relationship has however lasted some time. Much was made in the previous determination, which I set aside, of the prenuptial agreement but it does not seem to me that it contains anything that would be prejudicial to PS or give the Appellant cause to marry the Sponsor for potential financial gain. I make nothing of the fact that they met and married within seven months. As PS says, they are a mature couple. No account was taken of the fact that the Appellant returned to Thailand to wed and to make her application for entry clearance. No weight was given to the ties the Sponsor clearly has in the UK or to the amount of time he had spent in Thailand.

37. The decision of the Respondent under Appendix FM was reliant on his view that the Appellant' conduct, character and association make it undesirable that she be granted entry clearance. I have rejected the findings that she abused the NHS and that she adopted a false identity. I have accepted that she would have entered on a false passport but that was at the instance of an agent and does not in my view warrant a ban on entry. I have given the Respondent the benefit of the doubt and accepted the possibility that the Appellant worked in the UK without permission but there is no indication that she ever relied on public funds and again I do not accept that working without permission of itself warrants a refusal of entry clearance. She did of course remain here illegally but if it were the case that she was trafficked and was forced to work in the sex trade to pay off debt due to the agent she would have had no choice but to remain in the UK. (I accept that this information was not before the Entry Clearance Officer when the decision was made). The Entry Clearance Officer appears to have given no weight to the fact that she did at one point go back to Thailand only to return to the UK to resume an abusive relationship. It is clear that the Entry Clearance Officer failed to properly assess in the round the evidence before him and indeed that some of it was misinterpreted. It seems to me that a very negative interpretation was given to all the elements of the evidence and any positive elements ignored. I find that the refusal under para S-EC 1.5 was not in accordance with the law.
38. I turn now to paragraph 320(11) and the question of whether there are aggravating circumstances in this case. I have dealt above with the points relied on by the Respondent.
39. **In PS (paragraph 320(11) discretion: care needed) India [2010] UKUT 440 (IAC)** the Tribunal said in the headnote,
- 'In exercising discretion under paragraph 320(11) of HC 395, as amended, to refuse an application for entry clearance in a case where the automatic prohibition on the grant of entry clearance in paragraph 320(7B) is disapplied by paragraph 320(7C), the decision maker must exercise great care in assessing the 'aggravating circumstances' said to justify refusal and must have regard to the public interest in encouraging those unlawfully in the United Kingdom to leave and seek to regularise their status by an application for entry clearance.'
40. They also said ,
- 'It is therefore wholly unclear whether the Entry Clearance Officer has addressed his mind to the relevant question, namely whether in the circumstances of this case Mr S's breach of UK immigration law was sufficiently aggravating so as to justify the refusal. It seems to us that the Entry Clearance Officer should have specifically recognised that Mr S had voluntarily left the United Kingdom more than 12 months ago with a view to regularising his immigration status. There was no question but that the marriage was a genuine one. If the aggravating circumstances are not truly aggravating there is in this context a serious risk that those in the position of Mr S will simply continue to remain in the United Kingdom unlawfully and will not seek to regularise their

status as he has sought to do. The effect then is likely to be counter-productive to the general purposes of the relevant rules and to the maintenance of a coherent system of immigration. However, as explained, the Entry Clearance Officer in this case did not address the correct question and did not carry out an adequate balancing exercise under the guidelines. Furthermore, Mr S had made a claim under Article 8 which, standing alone, may not have been very strong. Nonetheless the family circumstances needed to be evaluated carefully in the balancing exercise to which we have referred.'

41. It is clear that the question of whether an applicant has left the UK to make an application from her home country is a relevant one yet it seems that no weight was given to that. As with para S-EC 1.5 of Appendix FM what we are left with is the issue of employment without permission, use of a false passport to enter the country and remaining here without leave. There is a very long list of possible 'aggravating circumstances' and I do not think, looking at all the evidence in the round and taking account of the fact that the Appellant is in a genuine relationship and returned to Thailand to marry and to make her application for entry clearance, that it can be said that these three connected factors can be said to amount to 'aggravating circumstances in terms of paragraph 320 (11).
42. I find that the refusal of entry clearance under paragraph 320 (11) was not in accordance with the law.

### **Notice of Decision**

The appeal is allowed under the Immigration Rules.

Signed

Date: 2<sup>nd</sup> July 2015

N A Baird  
Deputy Judge of the Upper Tribunal

### **TO THE RESPONDENT** **FEE AWARD**

As I have allowed the appeal and because a fee has been paid or is payable, I have considered making a fee award and have decided to make a fee award of one half of the fee of £140.00 because all the evidence that could have been placed before the Entry Clearance Officer with the application was not.

Signed

Date: 2<sup>nd</sup> July 2015

N A Baird  
Deputy Judge of the Upper Tribunal

**Direction regarding anonymity - rule 13 of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014**

Unless and until a tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify her or any member of their family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of Court proceedings.