



IAC-FH-AR-V1

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

Appeal Number: OA/00157/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 14 January 2016**

**Decision & Reasons Promulgated
On 11 February 2016**

Before

UPPER TRIBUNAL JUDGE FINCH

Between

ENTRY CLEARANCE OFFICER, DHAKA

Appellant

and

**MONOWARA BEGUM
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: Miss S Sreeraman, Home Office Presenting Officer
For the Respondent: Mr S Hassan, Kalam Solicitors

DECISION AND REASONS

1. The Respondent, who was born on 20 November 1973, is a national of Bangladesh. She met Abdul Jabbar, who is a British citizen, on 15 August 1990. He had been born on 26 January 1952 and he is now in receipt of DLA because of a number of medical conditions from which he suffers.
2. On 2 October 2007 the Respondent was refused entry clearance because her husband's only income was welfare benefits. On 26 August 2013 she applied again for entry clearance. Her application was refused on 19 November 2013 again because it was said her husband was not in receipt

of benefits that could attract consideration under paragraph E-ECP.3.3. of Appendix FM to the Immigration Rules.

4. She appealed and on 15 July 2015 First-tier Tribunal Judge McMahon allowed her appeal. In particular, he found that the evidence before him established that the Respondent's husband was in receipt of Disability Living Allowance or its equivalent and that, therefore, he could meet the requirements under the Immigration Rules.
5. On 21 July 2015 the Appellant appealed against this decision. She did not dispute that the evidence had shown that the Respondent's husband was in receipt of the necessary disability benefit. But she submitted that the Judge had failed to consider the second part of the Rule, which was E-ECP3.3.(b), which required the Respondent to provide evidence that her partner was able to maintain and accommodate himself and her and any dependants adequately in the UK without recourse to public funds.
6. There was no issue between the parties as to her partner's ability to accommodate her but the Judge was required to consider her partner's ability to maintain her without recourse to (additional) public funds. But all he said in paragraph 13 of his decision was: "I am satisfied that as at the date of application and the date of refusal the sponsor was in fact in receipt of disability living allowance" and "thus the financial requirements of Appendix FM were met".
7. As a consequence, I find that he made a material error of law in failing to address the requirements contained in E-ECP3.3(b) of Appendix FM.
8. I note that there was evidence in the Respondent's sponsor's witness statement in the and the documents attached to it that he was in receipt of sufficient money to maintain her, which appears to have been overlooked by First-tier Tribunal Judge McMahon.

Notice of Decision

9. I allow the Appellant's appeal but maintain the findings of fact made by First-tier Tribunal Judge McMahon.
10. I remit the case to First-tier Tribunal Judge McMahon in order for him to consider whether the requirements of E-ECP3.3.(b) of Appendix FM are also met on the evidence referred to in paragraph 8 above.

Signed

Dated: 2 February 2016

Nadine Finch
Upper Tribunal Judge Finch