



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: HU/11100/2015

THE IMMIGRATION ACTS

Heard at Field House  
On 6 June 2017

Decision & Reasons Promulgated  
On 6 June 2017

Before

UPPER TRIBUNAL JUDGE KAMARA

Between

MRS SIDDIQA BATOOL  
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: No attendance  
For the Respondent: Mr I Jarvis, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. This is an appeal against the decision of First-tier Tribunal Judge Farrelly, promulgated on 30 June 2016. Permission to appeal was granted by Designated Judge of the First-tier Tribunal R C Campbell on 24 April 2017.

Anonymity

2. No direction has been made previously, and there is no reason for one now

### Background

3. The appellant sought entry clearance as a partner under Appendix FM of the Rules. That application was refused on 22 September 2015 solely on the basis that the financial requirements were not met. Firstly, the sponsor was relying on cash savings of £47,586.14, whereas a sum of £54,115 was required. Secondly, the funds had not been held for a minimum of 6 months prior to the submission of the application form and thirdly the source of £30,000 of those funds had not been demonstrated. Article 8 ECHR was considered however the Entry Clearance Officer did not consider there to be any exceptional circumstances.
4. An Entry Clearance Manager reviewed the decision following the appellant lodging an appeal against the decision. It was explicitly accepted that cash savings of £47,032.50 would be required to make up the deficit in the sponsor's income and that this amount had indeed been held for the 6 months immediately prior to the application. Nonetheless, the original decision was maintained because there was "*no evidence regarding where these funds have originated*" and the ECM was not satisfied that they were under the control of the sponsor.

### The hearing before the First-tier Tribunal

5. The appeal before the First-tier Tribunal, proceeded on the papers as requested by the appellant in her notice of appeal. The judge dismissed the appeal because the sponsor's grant income was less than the tax-free equivalent of £18,600, which she calculated at around £15,800. She concluded that the sponsor could not combine his grant income with savings. The Article 8 ground of appeal was also dismissed.

### The grounds of appeal

6. Permission to appeal was granted on the basis it was arguable that the judge erred in her assessment because the evidence before the Tribunal appeared to show that combining the sponsor's grant and the available cash savings produced an amount, over £15,800, arguably showing that the requirements of the Rules were met.
7. The respondent's Rule 24 response, received on 10 May 2017 said little other than that the appeal was opposed.

### The hearing

8. There was no attendance on behalf of the appellant. She has never been legally represented. I was satisfied that the notice of hearing had been posted, in good time, to the appellant in Pakistan as well as to her sponsor in Luton. I therefore proceeded to hear the appeal in the absence of either a sponsor or a representative.
9. Mr Jarvis commented that the appellant's grounds were well-written and that the respondent accepted her complaint as to the judge's findings. He referred to the

Secretary of State's guidance, which said that a person can add other income or savings to a tax-free source of income and the judge was wrong to say otherwise. Mr Jarvis accepted that the documents showed that sufficient sums were available for the appellant's maintenance and invited me to set aside the judge's decision and remake it, allowing the appeal.

10. While I had no hesitation in setting aside the decision of the First-tier Tribunal for the same reasons indicated by Mr Jarvis, I declined to remake the decision for the following reasons.
11. There was only one matter at issue at the time of the appellant's appeal to the First-tier Tribunal, that of the source of the funds and whether they remained under the control of the sponsor. The ECM had conceded the remaining issues following the review. The judge did not address this issue, even indirectly.
12. While I note that it is said that the appellant's brother in law gave the sponsor the £47,000 in question, the material before me does not appear to address the absence of supporting evidence remarked upon by the ECM or the concern as to whether these funds genuinely remained under the sponsor's control.
13. Given that the appellant may not have expected the focus of the appeal to have changed before the Upper Tribunal, I decided, in the interests of justice, to remit the appeal to the First-tier Tribunal, de novo, to afford her the opportunity to address this matter at a further hearing.

### Decision

**The making of the decision of the First-tier Tribunal did involve the making of an error of on a point of law.**

**The decision of the First-tier Tribunal is set aside.**

**The appeal is remitted, de novo, to the First-tier Tribunal to be reheard at any hearing centre, with a time estimate of 1 hour by any judge except First-tier Tribunal Judge Farrelly.**

Signed *T Kamara*

Upper Tribunal Judge Kamara