



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

Appeal Numbers: EA/05686/2016
OA/04556/2014

THE IMMIGRATION ACTS

**Heard at Manchester Civil Justice Centre
On 13th December 2018** **Decision and Promulgated
On 15th January 2019** **Reasons**

Before

Upper Tribunal Judge Chalkley

Between

**IB
(ANONYMITY DIRECTION MADE)**

Appellant

and

ENTRY CLEARANCE OFFICER - UK VISA SECTION

Respondent

Representation:

For the Appellant: Mr P A Thornhill of Thornhills Solicitors Limited
For the Respondent: Mr A McVeety, Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant is a national of Pakistan, female and was born on 1st January 1945. She appealed against the respondent's decision, the respondent being the Entry Clearance Officer, dated 24th March 2016, to refuse a family permit under Regulation 7 of the Immigration (European Economic Area) Regulations 2016 ("the Regulations").

2. The appellant had previously had an earlier application dismissed and in her appeal to the First-tier Tribunal, heard by First-tier Tribunal Judge Ransley in Manchester on 3rd October 2017, the judge based her credibility findings on the fact that the appellant had not during this appeal provided further evidence to satisfy a point which was questioned in her 2014 appeal. Mr Thornhill told me that this was not something which he, when appearing before the First-tier Tribunal Judge, was put on notice would be raised by the Presenting Officer.
3. The appellant challenged the determination on the basis that the appellant's representatives were not given prior notice of the issue raised, namely the appellant's sponsor's ability to financially support her, which had been an issue raised in the earlier appeal. Mr McVeety told me that if I felt this raised a question of fairness then he agreed that it would amount to a material error of law. Given the Tribunal's determination in *RM (Kwok On Tong) India* [2016] UKAIT 38, I concluded that the judge had unwittingly failed to act fairly and in the circumstances, the appellant has not had a fair hearing.
4. The making of the determination by First-tier Tribunal Judge Ransley did involve the making of an error of law. I set that determination aside in its entirety and remit the appeal for hearing before the First-tier Tribunal before a judge other than First-tier Tribunal Judge Ransley.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

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 her 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.

Richard Chalkley

A Judge of the Upper Tribunal

dated 30th December 2018