



Upper Tribunal
(Immigration and Asylum Chamber)

HU/04280/2018

THE IMMIGRATION ACTS

Heard at Glasgow
On 19 July 2019

Decision & Reasons Promulgated
On 24 July 2019

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

HAROON JABBAR

Appellant

and

ENTRY CLEARANCE OFFICER

Respondent

For the Appellant: Mr J Bryce, Advocate, instructed by JK Law, Solicitors
For the Respondent: Mr S Whitwell, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant appealed, on human rights grounds, against refusal of entry clearance as a spouse. FtT Judge Doyle dismissed his appeal by a decision promulgated on 24 December 2018.
2. The grounds of appeal to the UT are set out in an application dated 5 March 2019.
3. Mr Bryce has provided a skeleton argument, dated 5 June 2019, which firstly analyses how the evidence met the requirements of appendix FM and Appendix FM-SE of the immigration rules. At paragraph 9 the

argument then runs that the judge erred by not focusing on the relevant period, being the 6 months before the date of application on 25 October 2017, and that if treating the sponsor's employment as genuine, as the FtT appeared to have done, the financial requirements were met.

4. The only point then remaining would be suitability, on which the appellant states his position at paragraph 10.
5. Mr Bryce acknowledged that this was a case which could succeed only by showing that the requirements of the rules, designed in this respect to comply with human rights, were met, and not by showing a case outside the rules.
6. Mr Whitwell accepted that there was merit in the analysis for the appellant, but submitted that the judge failed to decide on the main point of the ECO's decision, which was not that the documentation failed to meet the rules, but that the underlying employment was not genuine.
7. Parties concurred that the outcome should be as follows.
8. The decision of the FtT is set aside. It stands only as a record of what was said at the hearing. It is appropriate under section 12 of the 2007 Act, and under Practice Statement 7.2, to remit to the FtT for a fresh hearing. The member(s) of the FtT chosen to consider the case are not to include Judge Doyle.
9. The *tempus inspiciendi* is 25 October 2017.
10. The case turns on two issues. Firstly, was the sponsor's employment genuinely as it was claimed to be at the date of application? (If so, the financial and evidential provisions of the rules were met.) Secondly, did the application fall to be refused on suitability grounds?
11. No anonymity direction has been requested or made.



19 July 2019
UT Judge Macleman