



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: HU/12006/2018

**THE IMMIGRATION ACTS**

Heard at Birmingham  
On 8<sup>th</sup> August 2019

Decision & Reasons Promulgated  
On 12<sup>th</sup> September 2019

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

MR IMRAN IMRAN  
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

ENTRY CLEARANCE OFFICER, ISLAMABAD

Respondent

**Representation:**

For the Appellant: Mr R. Ahmed (Counsel)

For the Respondent: Mr McVeety (Senior HOPO)

**DETERMINATION AND REASONS**

1. This is an appeal against the determination of First-tier Tribunal Judge Bircher, promulgated on 19<sup>th</sup> March 2019, following a hearing at North Shields on 12<sup>th</sup> February 2019. In the determination, the judge dismissed the appeal of the Appellant, whereupon the Appellant subsequently applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

## **The Appellant**

2. The Appellant is a male, a citizen of Pakistan, and was born on 6<sup>th</sup> March 1993. He appeals against the decision of the Respondent, Entry Clearance Officer, dated 30<sup>th</sup> April 2019, refusing his application for leave to enter the United Kingdom, as the spouse of a person present and settled in the United Kingdom, namely, his wife, Ms [SA].

## **The Appellant's Claim**

3. The essence of the Appellant's claim is that he has satisfied the financial requirements of Appendix FM because his sponsoring wife earns an annual salary of £20,119.13. She held two jobs. She works with the Coop, and has done so since 12<sup>th</sup> December 2009, and she also has a second job with Heat Restaurant, which job she began on 12<sup>th</sup> June 2017. Therefore, the refusal on the basis of financial requirements is not justified.

## **The Judge's Findings**

4. The judge set out the Immigration Rules (see pages 2 to 5 of the determination), before applying the burden and standard of proof in this case (see page 5). The judge had regard to the leading cases in this context (see pages 6 to 8). The judge then went on to give her reasons for refusal of the decision. She observed that there had been in this case "undercover often undated letter received at Arnhem Support Centre on 13<sup>th</sup> November 2018 from the Appellant's legal representatives (Arkwright Law), further electronic bank statements and letters from the Sponsor's two employers ...". The judge went on to say that, "however, despite the ECO setting out the reasons for refusal letter the requirements of Appendix FM-SE, the electronic documents are of little evidential value. This is because they do not satisfy the criteria as set out [in the Rules]". The judge explained that what was meant by this was that:

"If electronic bank statements are to be provided they must be accompanied by a letter from the bank on its headed stationery confirming that the electronic bank statements are authentic or each page of the electronic bank statements submitted must bear the official stamp of the issuing bank on every page" (paragraph 16, at page 9 of the determination).

5. Having so concluded, the judge then proceeded to have regard to Article 8 considerations, and refused the appeal on this basis as well. The conclusion was that it would not, in the circumstances, be disproportionate to refuse the Appellant's appeal.

## **Grounds of Application**

6. The grounds of application take issue with what the judge had stated above (at paragraph 16 of the determination). They go on to say that, "it is submitted that despite the Appellant not providing the electronic bank statements in the correct format before the FTT hearing the Judge of the FTT fails to make any express findings as to whether the Appellant's spouse is employed and earning to meet the

financial requirement (this is despite not providing the electronic bank statements in the correct format). In this case the evidence was not rejected as false, showed that the Appellant's spouse met the financial requirements at the date of making the application and also met the financial requirement of the date of hearing ... (see paragraph 9 of the grounds).

7. On 4<sup>th</sup> June 2019 permission to appeal was granted.

### Submissions

8. At the hearing before me on 8<sup>th</sup> August 2019, Mr Rashid Ahmed, appearing as Counsel on behalf of the Appellant, relied upon his grounds of application. He stated that the judge had before the Tribunal bank statements showing the net payment for each employment and this amount was in excess of the required £18,600, amounting to £20,119.13. Second, reliance was placed upon paragraph 9 of the grounds, namely, that the judge had not rejected as false the earnings that had been claimed, and this being so, the appeal ought to have been allowed. Third, the appeal should have been allowed on human rights grounds in any event, if the Rules had not been satisfied only for reasons of non-compliance with the electronic bank statements being not in the correct format.
9. However, Mr Ahmed also appeared to suggest initially that there had indeed been a letter from the bank in exactly the manner required by the judge. It was stated that there was a letter from the NatWest Bank which did accompany the electronic statements. Therefore, the appeal was wrongly dismissed in any event. At this stage, Mr McVeety spoke up and said that the only issue he had with this letter from the NatWest Bank was that it was dated 27<sup>th</sup> March 2019, whereas the hearing before the judge had been on 12<sup>th</sup> February 2019, thus being over a month later. Mr Ahmed asked for a short adjournment to discuss the matter with the sponsoring wife, and to consult with his solicitor on the phone. When he returned, he accepted that the position indeed was, as Mr McVeety had just clarified, namely, that the letter from the bank was now dated 27<sup>th</sup> March 2019, with the view to gaining permission from the Tribunal to appeal, but it had not been before Judge Bircher when the decision of the Tribunal below had been made.
10. The concession by Mr Rashid in this respect, forced him to fall back on other arguments in his grounds of application. He now relied upon the Upper Tribunal's presidential panel in **MM (unfairness; E & R) Sudan [2014] UKUT 105**, where the Tribunal had said that a successful appeal is not dependent on the demonstration of some failing on the part of the First-tier Tribunal. This is because "an error of law may be found to have occurred in circumstances where some material evidence, through no fault of the FTT, was not considered with resulting unfairness". I noted, however, that the difficulty with the submission is the reference in what the Upper Tribunal describes as "material" evidence. If the evidence of the letter from the National Westminster Bank, of 27<sup>th</sup> March 2019 was not actually before Judge Bircher's Tribunal of 12<sup>th</sup> February 2019 then it could not be evidence that was "material" to her decision making. It was evidence that arose after her decision had

been made. The judge could not be blamed for not taking into account something that she had been unable to take into account.

11. For his part, Mr McVeety submitted that the appeal would fail for two reasons. First, the letter of 27<sup>th</sup> March 2019 postdated the making of the decision by the judge, and the hearing of the appeal on 12<sup>th</sup> February 2019. Second, insofar as it is being alleged that the judge ought to have allowed the appeal because there is no finding by the judge as to the falsity of the electronic bank statements, this was untenable because the judge had quite simply concluded that the Appellant could not succeed because he could not comply with the Immigration Rules. The failure to comply meant that the appeal fell to be refused, unless it could be argued that the appeal ought to be allowed on human rights grounds. Third, the judge did consider the human rights arguments, with copious reference to the case law, and concluded in the end that the appeal could not succeed on this basis either.

### **No Error of Law**

12. I am satisfied that the making of the decision by the judge did not involve the making of an error on a point of law (see Section 12(1) of TCEA 2007) such that I should set aside the decision. My reasons are as follows.
13. First, the Appellant in this case did not succeed for two reasons. There was no letter from the bank “on its headed stationery confirming that the electronic bank statements are authentic”, as the judge explained (at paragraph 16). Such letter as there was, was dated 27<sup>th</sup> March 2019, but by that time, the decision had been promulgated on 19<sup>th</sup> March 2019. The judge cannot be faulted for being in error for that.
14. Second, and in any event, even in the absence of an accompanying letter from the bank, the appeal could have been allowed if it was the case that “each page of the electronic bank statement submitted ... bear the official stamp of the issuing bank on every page” (paragraph 16). This also was not the case. Indeed, the letter from the bank of 27<sup>th</sup> March 2019 actually makes it clear, in bold handwritten capital letters that, “when producing copy statements, not standard practice for each individual page to be stamped and dated”. This statement is signed by Michael J Walker. He describes himself as the personal banker of the sponsoring wife. If Michael J Walker was unable to date and stamp every single page, then the letter had to be submitted before the date of the decision appealed against, and this was not the case.
15. Third, Mr Ahmed’s submissions that the appeal ought to have been allowed even if there was no error on the part of the judge, on the basis of what the Tribunal stated in **MM [2014] UKUT 105**, “where some material evidence”, through no fault of the FTT, was not considered with resulting unfairness”, is distinctly unpersuasive. This is because the material evidence was not actually placed before the Tribunal on the relevant date and had not been sent in for consideration for the appeal. Finally, there is no prospect of a successful Article 8 challenge, for the reasons that the judge has set out in the remaining part of the determination. The decision cannot be disproportionate or unjustified, because it is open, as Mr McVeety submitted before

me, for the Appellant to apply again with the proper letters of authentication from the bank, as any other applicant would do, with a view to complying with the Immigration Rules.

**Notice of Decision**

16. The decision of the First-tier Tribunal did not amount to an error of law. The decision shall stand.
17. No anonymity direction is made.
18. The appeal is dismissed.

Signed

Date

Deputy Upper Tribunal Judge Juss

10<sup>th</sup> September 2019