



**Upper Tribunal  
(Immigration and Asylum Chamber)      Appeal Number: HU/19106/2019**

**THE IMMIGRATION ACTS**

**Heard at Field House  
On the papers  
On 8<sup>th</sup> February 2022**

**Decision & Reasons Promulgated  
On 09<sup>th</sup> March 2022**

**Before**

**UPPER TRIBUNAL JUDGE LINDSLEY**

**Between**

**UMER SHAHZAD  
(ANONYMITY ORDER NOT MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**DECISION AND REASONS**

*Introduction*

1. The appellant is a citizen of Pakistan born in 1989. He applied for entry clearance to join his partner in the UK on 27<sup>th</sup> August 2019. The application, which was accepted as being a human rights application, was refused on the same day. His appeal against the decision was dismissed by First-tier Tribunal Judge Adio in a determination promulgated on the 16<sup>th</sup> March 2021.
2. Permission to appeal was granted by Judge of the First-tier Tribunal Fisher on 7<sup>th</sup> May 2021 on the basis that it was arguable that the First-tier judge had erred in law. I found that the First-tier Tribunal had erred

in law for the reasons set out in my decision which is appended to this decision as Annex A.

3. The matter came before me to remake the appeal. It was agreed between the parties that there was no need for a hearing and that I should make a decision on the papers as the respondent conceded that entry clearance should be granted.

#### *Submissions - Remaking*

4. Mr Melvin accepts in his skeleton argument that the sponsor is still employed in the family hairdressing business following receipt of the two bundles of evidence submitted on 4<sup>th</sup> February 2022, which include bank statements and wages slips for the sponsor. Previously company accounts and tax documents had also been submitted. It is accepted for the respondent that the sponsor is currently on maternity leave but works as an office assistant for the family business and that all of the financial requirements of Appendix FM and FM-SE for entry to the UK as a partner are met, and therefore that entry clearance should be granted.

#### *Conclusions - Remaking*

5. The appellant's application to enter the UK as a spouse was accepted by the respondent in the original decision as meeting the suitability requirements; it was accepted that the relationship was an eligible one; and that he met the English language requirement. I therefore find that the appellant and sponsor have an Article 8 ECHR family life relationship.
6. The application for entry clearance was originally refused on the basis of a failure to meet the financial eligibility rules because of a contended failure to produce the required specified documents. In light of the concession by Mr Melvin that the financial requirements together with the specified documents of the Immigration Rules at Appendix FM and Appendix FM-SE are now met I allow the appeal on Article 8 ECHR human rights grounds as I find that the appellant can show that he meets all the requirements for entry clearance as a partner under Appendix FM and Appendix FM-SE of the Immigration Rules. In these circumstances I find that the interference with the family life of the appellant and the sponsor, which refusal of entry clearance represents, is a disproportionate interference with their right to respect for their family life as there is no public interest in his exclusion from the UK as he satisfies the relevant Immigration Rules for entry to this country as a partner.

#### Decision:

1. The making of the decision of the First-tier Tribunal involved the making of an error on a point of law.
2. I set aside the decision of the First-tier Tribunal and all of the findings.
3. I remake the appeal by allowing it on Article 8 ECHR grounds.

Signed: Fiona Lindsley  
Upper Tribunal Judge Lindsley

Date: 8<sup>th</sup> February 2022

## **Annex A: Error of Law Decision**

### **DECISION AND REASONS**

#### *Introduction*

1. The appellant is a citizen of Pakistan born in 1989. He applied for entry clearance to join his partner in the UK on 27<sup>th</sup> August 2019. The application, which was accepted as being a human rights application, was refused on the same day. His appeal against the decision was dismissed by First-tier Tribunal Judge Adio in a determination promulgated on the 16<sup>th</sup> March 2021.
2. Permission to appeal was granted by Judge of the First-tier Tribunal Fisher on 7<sup>th</sup> May 2021 on the basis that it was arguable that the First-tier judge had erred in law in the assessment of the financial requirements under Appendix FM of the Immigration Rules as he arguably erroneously used the sponsor's net rather than gross income. It is found to be arguable that if the First-tier Tribunal had used the gross figure that the requirements of the Immigration Rules would have been met and that this would therefore have been determinative of the Article 8 ECHR proportionality assessment.
3. The matter came before me to determine whether the First-tier Tribunal had erred in law, and if so to determine whether any error was material and whether the decision of the First-tier Tribunal should be set aside.

#### *Submissions - Error of Law*

4. In the grounds of appeal it is argued that the First-tier Tribunal erred in the assessment of the financial requirements under Appendix FM. It was accepted that all specified documents had been provided before the First-tier Tribunal, but the First-tier Tribunal Judge took the net amounts of earnings from the payslips and bank statements to calculate the sponsor's earnings, which was less than the required amount of £18,600, whereas at E-ECP.3.1 of Appendix FM the sponsor must show a gross income of £18,600. The sponsor's gross annual salary as attested to by her payslips is £18,999.96, and so the appellant was able to show compliance with the aspect of the Immigration Rules at the time of hearing. In these circumstances the sponsor ought to have benefitted from the "Covid Concession" as she was furloughed during lockdown but would otherwise have earned the required amount. As the ability of the appellant to meet the Immigration Rules was determinative of the appeal, as there was not public interest in refusing entry if he met them, this was a material error and the appeal ought to have been allowed.
5. In Mr Melvin's skeleton argument it is accepted that the calculation performed by the First-tier Tribunal Judge would not be indicative of failing to meet the financial requirements as the gross salary should have been used not the net salary. Mr Melvin indicated that although not raised by the respondent previously he was concerned that the First-tier Tribunal Judge had not properly assessed that all the specified

documents were before him or dealt with the submission of the presenting officer that the sponsor's job was not genuine but a construct to obtain entry clearance.

6. I informed the parties that I found that the First-tier Tribunal had erred in law as argued by the appellant and agreed by the respondent in the use of net rather than gross figures to calculate whether the sponsor earned the required funds. I would therefore set aside the decision and all of the findings. It was agreed that the remaking of the decision was to be adjourned as the sponsor's baby was unwell and she was unable to join the hearing, and updating specified evidence regarding earnings would be needed. I found that the remaking should take place in the Upper Tribunal as it is a narrow factual and legal issue. It was agreed that an Urdu interpreter and a two hour listing was needed. I did not give an oral judgement but instead set out my findings in writing below.

### *Conclusions - Error of Law*

7. The appellant's application to enter the UK as a spouse was accepted by the respondent as meeting the suitability requirements, and it was accepted that the relationship was an eligible one, and that he met the English language requirement. It was only refused on the basis of a failure to meet the financial eligibility rules because of a failure to produce the required specified documents.
8. At the hearing the First-tier Tribunal found that the required documents had been provided, as recorded at paragraph 20 of the decision. The First-tier Tribunal then went on to consider whether these documents evidenced the correct amount of funds. It is clear from paragraphs 22 and 23 of the decision that the amounts taken for the sponsor's earnings by the First-tier Tribunal are the net amounts on her payslips and the amounts being paid into her bank account. It is this net amount that is found to be insufficient to meet the £18,600 threshold required by the Immigration Rules. The Immigration Rules at E-ECP.3.1 (a) of Appendix FM require that a gross annual income of at least £18,600 be shown. I find that as the gross monthly amount of the sponsor's salary was £1583 that this would have amounted to a gross annual salary of £18,996 in normal times bar issues around furlough. It is clear therefore that the First-tier Tribunal erred materially in law in dismissing the appeal on this basis.

### Decision:

1. The making of the decision of the First-tier Tribunal involved the making of an error on a point of law.
2. I set aside the decision of the First-tier Tribunal and all of the findings.
3. I adjourn the re-make the appeal.

Directions:

1. Updating evidence of the sponsor's earnings conforming to Appendix FM-SE and any updating statements or other evidence with respect to the sponsor's earnings must be filed with the Upper Tribunal and served on the other party ten days prior to the remaking hearing.

Signed: Fiona Lindsley  
2021  
Upper Tribunal Judge Lindsley

Date: 7<sup>th</sup> September