



**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/20675/2019**

THE IMMIGRATION ACTS

**Heard at Cardiff Civil Justice Centre
On 6 January 2022
Remotely by Microsoft Teams**

**Decision & Reasons Promulgated
On 27 January 2022**

Before

UPPER TRIBUNAL JUDGE GRUBB

Between

ENTRY CLEARANCE OFFICER, SHEFFIELD

Appellant

and

SHAZIA BIBI

Respondent

Representation:

For the Appellant: Mr C Bates, Senior Home Office Presenting Officer
For the Respondent: Mr S Woodhouse, SH Solicitors Ltd

DECISION AND REASONS

1. Although this is an appeal by the Entry Clearance Officer (“ECO”), for convenience I will refer to the parties as they appeared before the First-tier Tribunal.

Introduction

2. The appellant is a citizen of Pakistan who was born on 20 September 1987.

3. On 7 November 2015, the appellant married, Mohammed Riyasat in Pakistan. Mr Riyasat is a British citizen. On 6 December 2019, the appellant gave birth to the couple's daughter.
4. On 5 September 2019, the appellant applied for entry clearance to join her husband (the sponsor) in the UK under Appendix FM of the Immigration Rules (HC 395 as amended). On 19 November 2019, the ECO refused the appellant's application. The ECO was not satisfied that the relationship between the appellant and her husband was genuine and subsisting such that the requirement in E-ECP.2.6 of Appendix FM was met. Further, the ECO was not satisfied that the appellant met the financial requirements in E-ECP.3.1 to 3.4 of Appendix FM.
5. On 27 February 2020, the Entry Clearance Manager ("ECM") upheld the ECO's decision on both bases.
6. The appellant appealed to the First-tier Tribunal. In a decision sent on 25 February 2021, Judge Ali allowed the appellant's appeal, on the only available ground of appeal, namely that the refusal of entry clearance breached Art 8 of the ECHR.
7. First, the judge found that the relationship between the appellant and sponsor was a genuine and subsisting one. Secondly, although the judge accepted that the appellant did not meet the financial requirements of appendix FM at the date of application, he accepted, on the basis of the evidence before him, that the sponsor's income (in the form of savings and pensions) met the requirements of the Rules at the date of the hearing. On the basis of that finding, and having regard to the public interest, the judge found that the refusal of entry clearance would breach Art 8 of the ECHR as being disproportionate.

The Appeal to the Upper Tribunal

8. The ECO appealed to the Upper Tribunal on a single ground, namely that the judge had failed to resolve an issue relied upon by the Presenting Officer at the hearing, namely whether the sponsor's savings were, in fact, genuinely his given the increase in savings between September 2019 and February 2021 from just under £23,000 to over £38,000 despite the sponsor's total annual income being approximately £13,500.
9. On 14 April 2021, the First-tier Tribunal (Judge Keane) granted the ECO permission to appeal on that sole ground.
10. Thereafter, on 13 May 2021, the Upper Tribunal (UTJ Norton-Taylor) made directions in relation to a "typed note" prepared by the Presenting Officer following the First-tier Tribunal hearing which, it was said, recorded that he had raised the issue of the genuineness of the savings held by the sponsor before the judge.
11. In response to those directions, the ECO on 25 May 2021 indicated that the "typed note" was in fact the Presenting Officer's hearing minute summarising the events at the appeal and prepared on the day of the

appeal. That hearing minute had been provided with the grounds of appeal.

12. On 6 January 2022, the appeal was listed for hearing at the Cardiff Civil Justice Centre. I was present in court and Mr Bates, who represented the ECO, and Mr Woodhouse, who represented the appellant, joined the hearing remotely by Microsoft Teams.

The Issues

13. At the hearing, Mr Bates did not rely upon the ground of appeal upon which permission had been sought and granted by the First-tier Tribunal. He accepted that if the appellant met the financial requirements of Appendix FM on the basis of the specified documents required by Appendix FM-SE, then it was not relevant whether the funds held by the sponsor in his savings account were genuinely his or not. It was sufficient that the specified documents showed, in accordance with the requirements of Appendix FM, that taking together his pensions with his savings, he met the financial requirements in E-ECP.3.1-3.4.
14. Instead, Mr Bates contended that the documentation did not meet the requirements of Appendix FM-SE. In short, he submitted that the bank statements could not be shown to be on “official bank stationery” or, if “electronic bank statements” were accompanied by a letter from the bank on its headed stationery confirming that the documents were authentic or that each page bore an official stamp by the bank (see para A1(1)(a)(v) of Appendix FM-SE). In relation to the sponsor’s state and private pensions, there was no official documentation from the Department for Work and Pensions and the pension company confirming a pension entitlement and its amounts (see para A1(10)(e)(i)(1) and (3) of Appendix FM-SE).
15. Mr Bates accepted that these points had not been previously raised by the ECO, ECM, or before the First-tier Tribunal or in the grounds of appeal. Nevertheless, he invited me to, in effect, allow the ECO to amend his grounds of appeal to allow a challenge to the judge’s finding that the sponsor’s income met the financial requirements of the Rules at the date of hearing.
16. On behalf of the appellant, Mr Woodhouse submitted that it was now too late for the ECO to raise this argument at the hearing in the Upper Tribunal. In any event, he submitted that there were supporting documents in relation to the two pensions at pages 81-86 and 80 of the bundle. He also submitted that the bank statements did meet the requirements of the Rules.

Discussion

17. The judge’s finding that the appellant’s relationship with the sponsor was genuine and subsisting is not challenged. Further, the judge’s finding that the appellant could not meet the financial requirements at the date of application is also not challenged. That would have required the appellant

to rely on joint accounts held by the sponsor and his two sons in Pakistan which the judge concluded was not permitted by the Rules.

18. Nevertheless, at para 25 of his decision the judge found that a combination of the sponsor's annual pensions plus his savings in his sole name did meet the requirements of the Rules at the date of hearing. Para 25 is as follows:

"However, as this is an appeal brought under Article 8 of the Human Rights Act I am able to consider the circumstances of the appellant at the time of the hearing. At the time of the hearing the sponsor's income was presented as follows; he was in receipt of UK State Pension of £564.60, which is paid to him every four weeks. He was in receipt of a private pension of £518.35 from Lafarge UK Pensions, which is paid to him every month. The pensions combined yield an annual income of £13,560. In addition to this the sponsor submitted bank statements in his name only, that he held with the NatWest Bank (pages 11 to 26 of AB). The bank statements showed an account balance of £12,029.07 (bank account ending 7706 as of 01.02.2021) and £26,035.35 (Bank Account ending 0485 as of 01.02.2021) respectively and so in total he had a total savings of £38,064.45, applying the above there was a deficit of £5,040 in order to meet the income requirement of £18,600. In applying the respondent's own guidance, the appellant would require a minimum savings of £28,600 in order to meet the income requirement. It is evident that on the evidence before me the sponsor's savings of £38,064.45 far exceeds the minimum savings of £28,600 that is required. On that basis I find that the appellant is able to satisfy the financial eligibility requirements of Appendix FM. This is a factor which I can take into account when considering the proportionality of the decision to refuse leave to enter".

19. The actual figures disclosed by the documents relied on by the judge are not, in fact, disputed. However, as was accepted before me, the judge made a mistake by taking the highest figure for the sponsor's savings over the relevant period of time rather than the lowest continuous figure over that period.
20. The appellant had to establish that the sponsor's income was £18,600. The pension showed that he had an annual income of £13,560. That was a shortfall of £5,040. In order to rely upon savings to compensate for that shortfall, the appellant had to show that the sponsor had savings of 2.5 times the shortfall and an additional £16,000. That meant that the appellant had to show that the sponsor had savings of £28,600. It was accepted before me that the judge had been wrong to say that the sponsor's total savings were £38,064.45 over the required period when in fact they were £32,848.85. The judge's mistake was immaterial since the available savings (even when corrected) were, if properly evidenced, sufficient to meet the shortfall, relying solely on the pensions, in establishing the required £18,600 income.
21. Appendix FM-SE requires that the sponsor's income in the form of his pensions and his savings in his bank accounts be established on the basis of the specified documents. As regards his savings they must be

established by means of bank statements covering the specified period (which it is accepted the documents covered) which are either on official bank stationery or if electronic bank statements were accompanied by a confirmatory letter from the bank or each document bears an official stamp by the bank to authenticate the statements (see para A1(1)(a)(v)). In relation to the pensions, in addition to a personal bank statement in the relevant twelve month period, there must be official documentation from the DWP and the private pension company confirming the pension entitlement and the amount (see paras A1(10)(e)(i)(1) and (3), and para A1(10)(e)(ii)).

22. At no point in the proceedings until the hearing before the Upper Tribunal has the ECO, ECM or their representatives on appeal, contended that the documents produced by the appellant in relation to the sponsor's savings and pension entitlements did not comply with the requirements of Appendix FM-SE.
23. Before the ECO and ECM, the sponsor's pensions were accepted. The basis upon which the ECO found (and his decision was maintained by the ECM) that the appellant did not meet the financial requirements of the Rules was that reliance could not be placed upon sums held in bank accounts by the sponsor jointly with his sons.
24. Before the First-tier Tribunal, that remained the position of the respondent's representative in relation to the documents. Of course, the judge accepted (and it is not now challenged) that the appellant could not rely on joint accounts held by the sponsor with his sons. But, again, the documentation presented on behalf of the appellant in relation to the sponsor's bank accounts in his sole name and in relation to his pensions was not contended to be other than in compliance with Appendix FM-SE. The issue before the judge, which was the basis of the sole ground of appeal to the Upper Tribunal, was that the judge should not have relied upon the bank statements relating to the sponsor's savings without dealing with the point raised by the Presenting Officer that the funds held in those accounts were, at least potentially, not genuinely the sponsor's funds. It was not suggested before the judge that the sponsor's pensions were not properly evidenced and established and it was also not suggested that the bank statements, in themselves, could not be relied upon as complying with Appendix FM-SE provided the sums were genuinely available to the sponsor.
25. On this basis, permission to appeal was sought and granted solely on an issue which Mr Bates now accepts he cannot succeed upon. The point he now relies upon was not even raised in the response to the UT's directions made following the grant of permission. The appellant has never had notice that the respondent considers that the documentation that was submitted in relation to the sponsor's savings and pensions did not, in itself, meet the requirements of Appendix FM-SE.
26. I was taken to some of the documentation in the respondent's bundle and in that of the appellant's bundle before the First-tier Tribunal. There are

undoubtedly bank statements which set out and, on their face, show the level of savings that the respondent accepts the sponsor required. In addition, those bank statements also show regular payments in from the DWP and Lafarge UK Pension of monthly sums reflecting (what is not disputed) that the sponsor receives these pensions. In addition, I note that there are, albeit in photocopy form, documents in the respondent's bundle from the DWP and Lafarge UK Pensions in relation to the sponsor and showing the sums which the appellant relies upon as being his pension income (see e.g. pages 80 (DWP) and 81–86 (Lafarge UK Pension Plan)). As I indicated at the hearing, I am unable to assess definitively whether the sponsor's bank statements which have been submitted are on official headed paper or are printouts of electronic bank statements. Although, the NatWest statements for June to December 2019 in the appellant's bundle appear to be the former, having official headings and footers. It is also unclear whether originals were available to the ECO and ECM. The respondent's bundle contains, as is usual, photocopies. But, as I say, none of the documents were challenged as not complying with Appendix FM-SE prior to the hearing before me.

27. As Mr Bates concedes, the only ground of appeal by the respondent (and which was the only ground therefore upon which permission to appeal was granted) is unsustainable. In my judgment, it is too late for the respondent to rely upon a point which was not taken by the ECO, by the ECM, before the First-tier Tribunal or in the respondent's grounds of appeal to the UT or subsequent response to the UT's directions. The point could (and should) have been taken by the ECO or at any time thereafter if considered relevant. No other criticism is made of the judge's finding that the appellant succeeded under Art 8. In my judgement, the judge's finding that the appellant met the financial requirements of Appendix FM as at the date of hearing on the basis of the documentation (whose compliance with Appendix FM-SE was not challenged) and his decision to allow the appellant's appeal under Art 8 of the ECHR are legally unassailable.

Decision

28. For the above reasons, the decision of the First-tier Tribunal to allow the appellant's appeal under Art 8 did not involve the making of an error of law. That decision, therefore, stands.
29. Accordingly, the respondent's appeal to the Upper Tribunal is dismissed.

Signed

Andrew Grubb

Judge of the Upper Tribunal
13 January 2022

TO THE RESPONDENT
FEE AWARD

The judge did not make a fee award and that has not been challenged. The judge's decision stands.

Signed

Andrew Grubb

Judge of the Upper Tribunal
13 January 2022