



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-000665
FtT no: HU/61762/2023
LH/00556/2024

THE IMMIGRATION ACTS

**Decision & Reasons Issued:
On 22nd October 2024**

Before

UPPER TRIBUNAL JUDGE LANE

Between

FARHANA YESMIN

(NO ANONYMITY ORDER MADE)

and

Secretary of State for the Home Department

Appellant

Respondent

Representation:

For the Appellant: Not present or represented
For the Respondent: Mr Thompson, Senior Presenting Officer

Heard at Phoenix House (Bradford) on 31 May 2024

DECISION AND REASONS

1. The appellant, a citizen of Bangladesh born on 10 October 1993, made an application on 21 October 2022 for leave to remain on the basis of family life with her husband and which was refused on 23 September 2023. She is sponsored by her husband, Mr Monjurul Hasan Nazrul, a British citizen, aged 36 (date of birth 3 February 1987). Her appeal to the First-tier Tribunal was dismissed by a decision promulgated on 1 February 2024. She now appeals to the Upper Tribunal.
2. Neither the appellant nor her legal representatives attended the initial hearing in the Upper Tribunal on 31 May 2024. No reason was provided. I am satisfied that the notice of hearing was served on both the appellant and her representatives. In the circumstances, I decided that the appeal

could be justly determined by proceeding in the absence of the appellant. Subsequent to the hearing, I was informed that the appellant's representatives were without instructions.

3. Mr Thompson, Senior Presenting Officer, appeared for the Secretary of State. After I had heard his submissions, I reserved my decision.

4. Permission was granted in the following terms:

It is arguable that the judge materially erred in law in requiring the Appellant to show that she met the strict requirements of paragraph 1 (bb) of Appendix FM-SE because that requirement had been waived by the Respondent in their exercise of discretion under the Immigration Rules.

It is also arguable that the judge materially erred in law in relation to the availability of support from third parties, for the reasons stated in the grounds.

Permission is granted on all grounds

5. The grounds of appeal [3] assert that 'No issue was taken in the Respondent's Review that, if the payslips showed the correct income, it would meet the requirements of the Immigration Rules if they *continued*' [appellant's emphasis]. Mr Thompson submitted that the absence of any 'issue' having been taken did not amount to a concession by the Secretary of State that the Immigration Rules need not be complied with. The parties were agree before the First-tier Tribunal that, whilst the appellant might well satisfy the income requirements in the future, she did not do so either at the date of application or the date of the hearing. As regards the requirements of the Rules the judge found that 'Six months' payslips prior to the date of application, with related bank statements are required, but which, even now, have not been provided ... A letter confirming [the sponsor's] current employment (as opposed to his past employment [132]), setting out the details required in paragraph 2 of Appendix FM-SE has not been provided (or, in the alternative, a contract of employment).' The judge had gone on to consider exceptional circumstances but had concluded that none existed. The judge had also given sustainable reasons [23] for not considering third party support.
6. I agree with Mr Thompson. The grounds of appeal go too far in construing the fact that the respondent's review did not specifically refer to the income requirement as a concession that the letter of the Rules need not be complied with; that was plainly not the case given that the review maintained the origin refusal on the basis of non-compliance with those Rules. I also agree, for the reasons given by Mr Thompson, that the judge had dealt correctly with exceptional circumstances and third party support. Consequently, I find that the appeal should be dismissed. The appellant can make a fresh application relying on the sponsor's current income. However, that is a matter for her and her advisors.

Notice of Decision

The appeal is dismissed.

C. N. Lane

Judge of the Upper Tribunal
Immigration and Asylum Chamber

Dated: 20 September 2024