



IAC-BH-PMP-V1

**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: OA/01414/2015

THE IMMIGRATION ACTS

**Heard at Bennett House, Stoke
On 8th March 2016**

**Decision & Reasons Promulgated
On 29th March 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE GARRATT

Between

**INSA SHERAZ
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr B Singh of Counsel instructed by Kenneth Jones Solicitors
For the Respondent: Mr A McVeety, Senior Home Office Presenting Officer

DECISION AND DIRECTIONS

1. Before the Upper Tribunal the Secretary of State becomes the appellant. However, for the sake of consistency and the avoidance of confusion, I shall continue to refer to the parties as they were before the First-tier Tribunal.

Background

2. On 27th January 2016 Judge of the First-tier Tribunal Davidge gave permission to the respondent to appeal against the decision of Judge of the First-tier Tribunal Somal in which she allowed the appeal under the Immigration Rules and on human rights grounds against the decision of the respondent to refuse entry clearance as a spouse in accordance with the provisions of Appendix FM applying the evidential requirements under Appendix FM-SE of the Immigration Rules.
3. In granting permission Judge Davidge thought it arguable that the judge was wrong to allow the appeal based upon the appellant's own evidence of her ability to meet the financial requirements of the Immigration Rules when the documentary evidence specified by Appendix FM-SE was absent. She also thought it arguable that the judge had failed to identify compelling circumstances justifying allowing the appeal on Article 8 grounds outside the Immigration Rules when the appellant and sponsor could enjoy family life outside the United Kingdom or, alternatively, make a fresh application correctly evidenced. In that respect Judge Davidge also considered that the judge may have been affected by her incorrect decision in respect of the Rules and so arguably failed to assess proportionality in the context of the reasonableness of relocation.

Error on a Point of Law

4. At the commencement of the hearing before me Mr Singh indicated that he accepted that the appellant had not met the provisions of the Immigration Rules, particularly the specific documentary provisions set out in Appendix FM-SE, and that the human rights decision was flawed. Mr McVeety confirmed that the respondent continued to rely upon the grounds of application which had been correctly summarised in the grant of permission. Both representatives also indicated that it would be appropriate for the appeal to be re-heard by the First-tier Tribunal as the evidence would need to be re-examined and the Article 8 claim reconsidered.
5. I indicated that I was satisfied that the decision was fundamentally flawed as the grant of permission indicated. In particular I had noted that, in paragraph 11 of the decision, the judge stated that the sponsor met the requirements of Appendix FM-SE when the judge had already pointed out that the personal bank statements submitted did not show employed income as the sponsor had been paid in cash and had also noted that deposits paid in cash, said to represent pay, did not reflect the amounts shown in payslips. Further, in relation to the Article 8 claim, the judge had failed to identify any compelling circumstances which could lead to a grant of leave outside the Rules without considering the possibility of relocation or a further application providing the correct evidence.
6. In the circumstances I have outlined it is appropriate for the matter to be heard afresh by the First-tier Tribunal having regard to the provisions of paragraph 7.2(b) of the Practice Statement issued by the Senior President of Tribunals on 25th September 2012.

DIRECTIONS

7. The appeal is remitted to the First-tier Tribunal for hearing afresh.

8. The remitted hearing will take place at the Stoke Hearing Centre on a date to be specified by the Resident Judge.
9. The time estimate for the hearing is two hours.
10. No interpreter will be provided for the hearing unless representatives indicate to the contrary.

Signed

Date

Deputy Upper Tribunal Judge Garratt