



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: HU/08879/2015

**THE IMMIGRATION ACTS**

Heard at Field House  
On 19 July 2017

Decision & Reasons Promulgated  
On 10 August 2017

Before

DEPUTY UPPER TRIBUNAL JUDGE NORTON-TAYLOR

Between

MRS MARYAN ALI KAHIYE  
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Ms F Allen, Counsel, instructed by CNA Solicitors

For the Respondent: Mr P Nath, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The Appellant appeals against the decision of First-tier Tribunal Judge R L Walker (the judge), promulgated on 19 April 2017, in which he dismissed the Appellant's appeal. That appeal had been against a decision of the Entry Clearance Officer dated 14 September 2015, refusing the Appellant's application made on 24 June 2015. The application was in relation to the Appellant's desire to join her British citizen husband in the United Kingdom (the sponsor). The Entry Clearance Officer's decision disputed the genuineness of the relationship and stated that the financial requirements under Appendix FM to the Rules had not been met.

### **The judge's decision**

2. There was no Presenting Officer at the appeal before the judge. At paragraph 20 the judge found that the Appellant's relationship with the sponsor was genuine and subsisting. At paragraph 23 he found that the financial requirements under Appendix FM had in fact been met. There were no other substantive issues relating to Appendix FM which were live before the judge. Notwithstanding this, the judge went on in paragraphs 24 to 27 to consider the Article 8 claim "outside of the Rules". In so doing the judge concluded that recent evidence in the form of a set of accounts produced by chartered accountants was "inconclusive and insufficient" to prove the sponsor's most recent earnings. On this basis the judge concluded that the Appellant should make a fresh application and he therefore dismissed the appeal.

### **The grounds of appeal and grant of permission**

3. The grounds of appeal are succinct. They assert that once the judge had concluded that the requirements of Appendix FM were met he should then have allowed the appeal on Article 8 grounds. Further or alternatively, the judge failed to provide adequate reasons for rejecting the accountants' evidence of the sponsor's income, and that the judge had failed to make any findings in respect of the sponsor's own evidence on this point.

### **The hearing before me**

4. Ms Allen relied on the grounds. Mr Nath had nothing to add.

### **Decision on error of law**

5. I conclude that the judge has materially erred in law. My reasons for this conclusion are as follows.
6. It is clear from his findings that the judge was satisfied that all relevant requirements of Appendix FM had been met. In particular, the two matters raised in the Entry Clearance Officer's refusal were found to be misconceived. In relation to the financial requirements, no issue had been taken by the Entry Clearance Officer, the Entry Clearance Manager, or the judge in relation to any other specific requirements of Appendix FM-SE. There was no Presenting Officer at the hearing and therefore no new additional matters were raised by the Respondent at that stage.
7. The Rules represent the Respondent's stated policy as to where the balance lies between the public interest on the one hand, and the rights of individuals on the other. They represent in effect the Respondent's framework for the assessment of Article 8 claims in the first instance. This framework carries with it significant weight of course, as confirmed in numerous decisions of the higher courts. There has never been any suggestion from the Respondent that anything above and beyond satisfaction of the Rules was required in order for the Appellant to succeed in her claim. The application under Appendix FM was of course a human rights claim for the purposes of the statutory appeal's framework within which the judge was

himself deciding this case. I conclude that once the judge had found that all relevant requirements of Appendix FM were met he should have gone on to allow the appeal on this basis alone.

8. In relation to ground 2, I agree that the judge has erred in this respect as well. There is nothing to suggest that the judge deemed the accountants to be unreliable or that the set of accounts provided were “fake” in any way. There was no Presenting Officer to challenge this evidence at the hearing. Those accounts clearly showed (having seen the originals for myself) an annual profit of in excess of the £18,600 required by Appendix FM. In my view, no reasons, or at least no adequate reasons, had been provided by the judge to justify his conclusion that these accounts were “inconclusive and insufficient” to prove on the balance of probabilities that the sponsor’s profit was as set out in this evidence. In addition, I note that the sponsor himself had provided evidence confirming the amount of his income and its source. The judge has failed to consider this evidence or at least has failed to make any findings thereon. There is nothing to suggest that the judge found the sponsor to be unreliable as a witness in any material respect. There is a further error here.
9. In light of the above I set aside the judge’s decision.

### **Remaking the decision**

10. Both representatives were agreed that I should go on and re-make the decision in this case. This I now do.
11. There has been no challenge by Mr Nath to any of the positive findings made by the judge, neither has he challenged the reliability of the sponsor’s evidence (contained in the witness statement and in the form of the accounts) relating to his most recent financial circumstances. I find, as did the judge below, that all requirements of Appendix FM have been met by the Appellant. The marriage is a perfectly genuine and subsisting one. Having regard to the evidence as a whole, including the fact that no additional points had been taken by the Entry Clearance Manager or the Respondent at any time since the original refusal, I find that the financial requirements under Appendix FM have also been met. In so finding I specifically conclude that all of the requirements of Appendix FM-SE have been satisfied. There has never been any issue in relation to accommodation or the English language requirements, and I find that these have been met as well.
12. In respect of the sponsor’s current financial circumstances, I accept as being reliable his own evidence as reliable, and the same applies to the accounts relating to the tax year April 2016 to April 2017. I find that the minimum financial threshold of £18,600 has been exceeded by the sponsor.
13. In view of the above, the Appellant’s appeal is allowed on Article 8 grounds. First and foremost she succeeds because she has met all of the relevant requirements of Appendix FM. That in itself is sufficient.

14. In any event, the minimum income threshold of £18,600 is still exceeded by the sponsor's current income and this, combined with all other circumstances, goes to show that the Respondent's decision is disproportionate. I have had regard to all relevant factors under section 117B of the 2002 Act. The very important public interest consideration is met by the fact that the Appellant has satisfied the requirements of the Rules and as of now still meets the relevant minimum income threshold. There are no adverse English language issues.

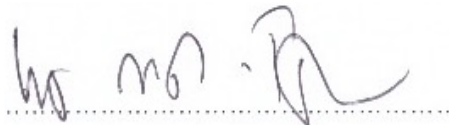
**Notice of Decision**

**The decision of the First-tier Tribunal involved material errors of law.**

**I therefore set it aside.**

**I re-make the decision by allowing the Appellant's appeal. The Respondent's refusal of the Appellant's human rights claim is unlawful under Section 6 of the Human Rights Act 1998.**

No anonymity direction is made.



Signed

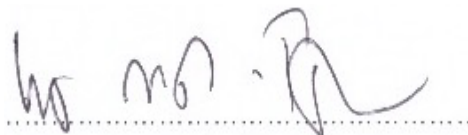
Date: 7 August 2017

Deputy Upper Tribunal Judge Norton-Taylor

**TO THE RESPONDENT**

**FEE AWARD**

As I have allowed the appeal and because a fee has been paid or is payable, I have considered making a fee award and have decided to make a whole fee award of £140.00. The Appellant has succeeded in her appeal and there is no good reason for me to reduce the fee award.



Signed

Date: 7 August 2017

Deputy Upper Tribunal Judge Norton-Taylor