**Upper Tribunal**
**(Immigration and Asylum Chamber)** Appeal Number: HU/14747/2017

**THE IMMIGRATION ACTS**

| **Heard at Fox Court** | **Decision & Reasons Promulgated** |
|---|---|
| **On 13 December 2018** | **On 09 January 2019** |

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE FROOM**

**Between**

**THE ENTRY CLEARANCE OFFICER**

Appellant

**and**

**Mrs MARIA RIZWAN**
(ANONYMITY DIRECTION NOT MADE)

Respondent

**Representation:**
For the Appellant: Mr T Wilding, Senior Home Office Presenting Officer
For the Respondent: Mr M Nadeem, Legal Representative

**DECISION AND REASONS ON ERROR OF LAW**

1. The appellant in this appeal is the Entry Clearance Officer, who appeals with the permission of the Upper Tribunal against a decision of Judge of the First-tier Tribunal J S Pacey, promulgated on 8 August 2018, in which she allowed the appeal of Mrs Rizwan against a decision of the Entry Clearance Officer, dated 10 October 2017, refusing her leave to enter in order to join her husband, Mr Rizwan Majid ("the sponsor"), whom she married on 10 August 2015, in the UK for settlement. It is more convenient to refer to the parties as they were before the First-tier Tribunal. From

now on I shall refer to Mrs Rizwan as "the appellant" and the Entry Clearance Officer as "the respondent".

2. The respondent refused the appellant's application because it was considered the financial requirements of Appendix FM of the Immigration Rules, HC395, were not met. The judge noted,

> "6. … [a] call had been made to the sponsor's stated employer but he had been unable to say what the business done (*sic*), and could not name the 5 employees. His accountant had signed the employment letter provided to the Home Office. He could also not state what qualifications or experience the sponsor had for his role, and employed him through passing the message to his cousin. He was unsure of the sponsor's salary then said first that the sponsor was at work then that he only worked weekends. The Respondent had been unable to interview the sponsor."

3. The sponsor and his father attended the hearing and gave evidence. The sponsor's employer provided a statement. The respondent was not represented. The judge concluded as follows,

> "17. I am satisfied on all the extensive documentary evidence provided that the sponsor is employed as claimed and that therefore the Appellant meets the financial requirements of appendix FM.
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> 18. With respect to the alleged telephone call, the Respondent has not seen fit to provide the interview record so it is not possible for me to verify the claims made in the refusal. The Respondent has not complied with rule 23(2)(e) of the Tribunals Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014 and I therefore attach little weight to the points made in the refusal, particularly given the ample documentary evidence that the sponsor is employed as claimed.
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> 19. I cannot even be certain, in the absence of the interview record, that the Respondent called the correct employer or that s/he have the sponsor's correct name or that the appropriate person was interviewed. Since he has chosen not to provide the record of the telephone call or to be represented at the hearing, very little weight can be attached to the claims made in the refusal.
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> 20. I note the Entry Clearance Manager states that no records can be found of an interview with the sponsor. I do not accept this. It is generally known that the Home Office maintain an Enrichment Activity Report in respect of telephone calls made in this context even if there is no answer. There should be a record and the fact that the ECM could not find one does not indicate that no call was made.
>
> 21. The Appellant meets the financial requirements of Appendix FM and hence the decision is disproportionate."

4. The basis of the respondent's challenge to the decision is that insufficient reasons have been given and it is not possible for the respondent to ascertain why the case has been lost. Reliance was placed on the Upper Tribunal decision in *Budhathoki (reasons for decisions)* [2014] UKUT 00341 (IAC). Permission to appeal was granted to argue this point.

5. The appellant has not filed a rule 24 response.

6. I heard oral submissions from the representatives concerning whether the judge made a material error of law such that her decision should be set aside.

7. Mr Wilding relied on the grounds seeking permission to appeal and said it was right that the judge had not provided sufficient reasons for finding the requirements of Appendix FM were met. However, he did not argue against the judge's approach to the respondent's allegation that the sponsor's employment was not genuine was erroneous. He said the judge was not entitled to allow the appeal unless she was satisfied the mandatory specified evidence rules found in Appendix FM-SE were met. She had not addressed these at all in her decision.

8. Mr Nadeem provided copies of *IO ("Points in Issue") Nigeria* [2004] UKIAT 00179, *MH (Respondent's bundle: documents not provided)* [2010] UKUT 00168 (IAC) and *Cvetkovs (visa- no file produced – directions) Latvia* [2011] UKUT 00210 (IAC) to make the point that the judge had been right to find the respondent had not established with evidence that a telephone call had been made to the sponsor's employer.

9. Having considered the matter carefully and having had the assistance of the submissions of both representatives, I concluded that the decision of the First-tier Tribunal does not contain any material error of law and shall stand.

10. The judge was plainly entitled to find that the respondent had not established that the telephone call had been made. That was the sole reason the respondent gave for rejecting the sponsor's employment and for concluding the minimum income requirement was not met. The judge found there was cogent documentary evidence before her as to the sponsor's employment. She was entitled to find it was genuine employment.

11. I have had regard to the well-known decisions in *MK (duty to give reasons) Pakistan* [2013] UKUT 00641 (IAC) and *Budhathoki* and, more recently, the decision of the Court of Appeal in *MD (Turkey) v SSHD* [2017] EWCA Civ 1958, in which Singh LJ considered the extent of the duty to give reasons and, in particular, the question of adequacy. He said as follows,

> "26. … It is important to appreciate that adequacy in this context is precisely that, no more and no less. It is not a counsel of perfection. Still less should it provide an opportunity to undertake a qualitative assessment of the reasons to see if they are wanting, perhaps even surprising, on their merits. The purpose of the duty to give reasons is, in part, to enable the losing party to know why she has lost. It is also to enable an appellate court or tribunal to see what the reasons for the decision are so that they can be examined in case some error of approach has been committed."

12. I have concluded in the light of these authorities that the reasons given by the judge in this case are adequate. The respondent is well aware why the judge came to the conclusion she came to regarding the genuineness of the employment.

13. Mr Wilding's point about Appendix FM-SE was not a point on which permission to appeal was granted. However, the principle explained in *RM (Kwok On Tong: HC395 para 320) India* [2006] UKAIT 00039, that judges cannot allow appeals on the basis that a rule is met unless all the elements of that rule are met, is important. Whilst the judge in this case allowed the appeal because the decision was unlawful under section 6 of the Human Rights Act, she did so because she considered the requirements of the rules were met and there was therefore no public interest in refusal.

14. On closer examination, Mr Wilding was good enough to confirm that any error was not material in this case because it was more likely than not that the specified evidence had been provided to the entry clearance officer with the application. I was shown a copy of a covering letter by the appellant's former solicitors, Mondair Solicitors, dated 14 February 2017. This letter lists the enclosures. The reason these are not addressed by the respondent in the decision (or copied in the bundle) was likely to be that it was not considered necessary to do so in view of the assessment made of the genuineness of the employment.

15. At the time of the application the sponsor held two jobs: full-time employment with Madina Foods Ltd and part-time employment with UK Pizza. His combined earnings were £21,840, so exceeded the threshold of £18,600. The date of application was 14 February 2017. The specified evidence requirements in this case were set out in paragraph 2 of Appendix FM-SE. I note the appellant submitted the following:

    - The sponsor's wage slips for the employment with Madina Foods from 30 June 2016 to 31 January 2017 (six months prior to the application);
    - A letter from Madina Foods;
    - The sponsor's wage slips from UK Pizza from 5 July 2016 to 5 February 2017 (six months prior to the date of application);
    - A letter from UK Pizza; and
    - The sponsor's Barclays bank statements from 18 June 2016 to 8 February 2017 (corresponding to the pay slips).

16. Without seeing the documents, I cannot check, for example, whether all the required information was contained in the letters and the format of the bank statements was correct. However, the letter from Mondair Solicitors suggests the application was prepared competently and the letter contains a reference to Appendix FM-SE. The letter asserts the documentation complies with the requirements of the rules and requests that the policy on evidential flexibility be applied in the event of any incomplete or missing documents. It can safely be inferred from all the circumstances that the documents complied.

17. It follows there was no material error on the part of the judge in failing to satisfy herself that the requirements of Appendix FM-SE were met. I therefore dismiss the respondent's appeal. The decision of the First-tier Tribunal to allow the appellant's appeal shall stand.

**Notice of Decision**

The Judge of the First-tier Tribunal did not make a material error of law and her decision allowing the appeal shall stand.

No anonymity direction made.

Signed Date 14 December 2018

**Deputy Upper Tribunal Judge Froom**