Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/16434/2017

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 22 February 2019	**On 7 March 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE SYMES

Between

MASOUDA SHAHRWAND AHMADI
(ANONYMITY ORDER NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant:	Ms S Walker (counsel instructed by Rahman and Co Solicitors)
For the Respondent:	Mr S Melvin (Senior Home Office Presenting Officer)

DECISION AND REASONS

1. This is the appeal of Masouda Shahrwand Ahmadi, a citizen of Afghanistan born 30 June 1993, against the decision of the First-tier Tribunal (Judge Geraint Jones QC) of 23 November 2018 to dismiss her appeal, itself brought against the Respondent's decision of 27 November 2017 to refuse her application to join her partner in the UK as his spouse.

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Introduction

2. The Appellant married her husband, Ahmad Ahmadi, on 14 November 2014. She applied for entry clearance as a partner under Appendix FM on 21 August 2017.

3. The application was refused, because whilst the genuineness of the relationship was accepted, it was not established that the financial requirements were met, because Mrs Ahmadi had stated that her husband was employed as a sales assistant by Sun Foods Ltd with an annual salary of £17,687.64, below the £18,600 threshold; that assertion was inconsistent with the supporting letter from his employers stating he earned £19,000 annually. It was unclear who had signed that letter. The payslips recorded that he was paid in cash, but some deposits had been made in the name of Sunroads Ltd.

The First-tier Tribunal decision

4. Relevant supporting evidence placed before the First-tier Tribunal included

   (a) A letter from the Halifax stating that a deposit of 10 July 2017 was wrongly typed in as Sunroads Ltd rather than Sun Foods Ltd;

   (b) P60s from Sun Foods stating Mr Ahmadi earned £18,999.96 for the year ended 5 April 2018 and £7,557.99 for the year ended 5 April 2017;

   (c) A letter from the Appellant's employer confirming monthly earnings amounting to £9,499.98 over the six months leading to the application date.

5. The First-tier Tribunal concluded that the witness statement from the Sponsor did not adequately explain how it was that the financial requirements were met at the relevant date, being the date of application. It noted that Mrs Ahmadi had stated her husband's claimed earnings with extreme precision, giving a figure that could not reasonably considered to be an estimate, contrary to his suggestion in evidence that she had not known his exact earnings. It was highly probable that he did not earn more than the relevant threshold via earnings in the six months preceding the application given the discrepancies in the evidence. The Respondent had been entitled to conclude that the earnings threshold was not met given that the payslips from January to July 2017 showed gross earnings of £11,083.11. P60s could never demonstrate the actual earnings throughout a given tax year, as opposed to simply stating the annual earnings total.

Onwards appeal

6. Grounds of appeal argued that the First-tier Tribunal had materially erred in law because the Judge

   (a) Wrongly stated that the letter from the Sponsor's employer was dated 15 August *2070*, when it was in fact dated 15 August *2017*, and had stated that the letter described the company as Sun *Food* Ltd (rather than *Foods*);

   (b) Failed to appreciate that the bank statements in fact showed that the P60 for the year ended 5 April 2017 was wholly consistent with representing three months

of an annual salary exceeding £18,600, whereas that for the year ending 5 April 2018 demonstrating earnings that expressly exceeded £18,600;

(c) Erred in the consideration of the case outside the Rules, given that, taking the appropriate approach outside the Immigration Rules, the evidence clearly did show that the earnings threshold was met at the date of hearing, via the Sponsor's earnings as a taxi driver, bearing in mind the public interest represented by the contribution he made to the community, and the fact that the section 117B factors were in the Appellant's favour.

7. Permission to appeal was granted on 8 January 2018 by the First-tier Tribunal on the basis that arguably inconsistent findings had been made on the evidence, and the Judge might be read as having thought Article 8 was to be considered only if there were special or unusual circumstances in play.

8. Before me, Ms Walker for the Appellant submitted that the matter which had most concerned the First-tier Tribunal, being the discrepancy between the rather precise earnings stated for the Sponsor by the Appellant in her application form, had in fact arisen because the Appellant had made her own calculation of those earnings by taking the net monthly earnings shown by the pay slips and simply multiplying that figure by twelve. Inevitably that gave a figure which was incorrect, albeit one that was very precisely stated. In reality the specified documents required by the Rules were before the First-tier Tribunal and it failed to appreciate this. Mr Melvin for the Secretary of State stated he felt unable to seriously resist the appeal given the contents of the documents upon which the Appellant relied.

Decision and reasons

9. It seems to me that there was material error of law in the decision below. The crux of the Appellant's case was that the financial requirements were here met. When one reads the relevant components of Appendix FM–SE, it is apparent that they are indeed met. There are six months of bank statements which record the receipt of cash payments that accord with the six months of payslips, all of which is consistent with the employer’s letter.

10. Unfortunately the First-tier Tribunal appears to have been distracted by matters others than those shown by the documents. There was no challenge to the authenticity of the earnings that was sustainable on the material before it; the bank had themselves written to confirm an error in transcribing the origin of the payment which had originally concerned the Entry Clearance Officer.

11. I accordingly consider that there was a material error of law in the decision appealed, by way of the making of a significant error of fact as to the contents of the evidence before the Judge for which the Appellant was not responsible. The error goes to the heart of the appeal, which must accordingly be re-determined. The parties agreed that it was appropriate for the Upper Tribunal to finally determine the issue here and now.

12. The various sources confirming the earnings unite in confirming monthly earnings which over six months equal £9,499.98, a sum of money which would equate to annualised earnings of virtually £19,000, plainly more than £18,600. Accordingly the Immigration Rules were satisfied on the sole matter as to which the Respondent refused the original application.

13. Of course, this is an appeal on human rights grounds rather than one that focusses on the Immigration Rules alone. Nevertheless, satisfaction of the Rules takes one a long way towards establishing that a refusal is disproportionate. Sir Ernest Ryder in *TZ (Pakistan) and PG (India)* [2018] EWCA Civ 1109 §35 stated:

> "The policy of the Secretary of State as expressed in the Rules is not to be ignored when a decision about article 8 is to be made outside the Rules. An evaluation of the question whether there are insurmountable obstacles is a relevant factor because considerable weight is to be placed on the Secretary of State's policy as reflected in the Rules of the circumstances in which a foreign national partner should be granted leave to remain. … where a person satisfies the Rules, whether or not by reference to an article 8 informed requirement, then this will be positively determinative of that person's article 8 appeal, provided their case engages article 8(1), for the very reason that it would then be disproportionate for that person to be removed."

14. Having regard to that authority, and noting that the section 117B factors do not militate against the grant of leave, given the Appellant satisfied the English language criteria on her application, has demonstrated financial independence to the standard set by the Rules, and made an appropriate application for entry clearance from abroad, I find that the decision against which the appeal was brought is disproportionate to the family life with which it interfered. I allow the appeal.

Decision:

The decision of the First-tier Tribunal contains a material error of law.

The appeal is allowed on Human Rights Convention grounds.

Signed: Date: 22 February 2019

Deputy Upper Tribunal Judge Symes