



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

Appeal Number: HU/16665/2017

THE IMMIGRATION ACTS

Heard at Birmingham Civil Justice Centre

Decision & Reasons

On 22 January 2019

**Promulgated
On 15 March 2019**

Before

UPPER TRIBUNAL JUDGE PERKINS

Between

**ABDULQAYOOM ABDULQAWI ABDUALMAJED NASR
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms L Sanghera Solicitor from SH Solicitor

For the Respondent: Mr D Mills, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal by a citizen of Yemen, currently living in Egypt, against the decision of the respondent by an Entry Clearance Officer refusing him entry clearance to enter the United Kingdom as a husband. The appellant did not prove in the required way that he could be maintained in accordance with the Rules.
2. The appellant's case was straightforward. He said that he depended on his wife. His wife had two strands of income; she had income from benefit and she had income from her employment. That she receives income

from benefit to which she is perfectly entitled (it is a carer's allowance) is not controversial. Neither is it controversial that that is insufficient to maintain the appellant.

3. The appellant also says that his wife earns money from regular part-time employment. She has produced evidence to support that. She has given oral evidence and she has given letters from her employer which, if right, tend to show that she receives sufficient money. What she has not done is what the Rules require, which is to evidence the income by regular payments into a bank account. It would be troublesome for her to do that because she is paid in cash. The Rules recognise that not everybody is paid through their banks but the guidance makes plain that it is open to a person to take their cash, deposit it and make withdrawals if necessary. That might be described properly as something of a nuisance but it does not seem to me that it is particularly burdensome. It is not something that should be regarded as unfair or wrong at least not routinely in every case.
4. The appellant's wife has given no explanation for not doing what the policy requires other than finding it inconvenient and the First-tier Tribunal judge was unimpressed with that. It was argued that the judge did not evidential flexibility. I find that argument misconceived. Evidential flexibility is something which has created an area of argument but really, properly understood, is only applicable in a very small number of cases. Under Appendix D of Appendix FM of HC 395, under 1D, there is provision for admitting as evidence a document that has been in the wrong format or does not contain all the information. Clearly this is not a "wrong format" case.
5. In my judgment it is not a case where the Rule applicable when not all the specified information is on the face of the document. This Rule is clearly intended to apply where there has been a slip, where something has been left out and where the omission can be put right by looking elsewhere. It is to soften a Rule that is otherwise exceedingly inflexible. It is not intended to encourage or even permit people to effectively make up their own Immigration Rules by proving things in the way that they find convenient.
6. Neither is it something that comes within the scope of subparagraph E. This is not a case where the document cannot be supplied because it has been lost or because it cannot be issued, it has simply not been prepared.
7. The First-tier Tribunal was quite right to find that the appellant's circumstances did not satisfy the requirements of the Rules. The simple truth is that on the appellant's own case the Rules could have been satisfied but his wife chose not follow them.
8. It is always necessary in a human rights appeal to consider the Rules because sometimes people do satisfy the Rules and when they do it is very often only a short step to say that the appeal should be allowed on human rights grounds. This is a human rights based appeal. Generally it is

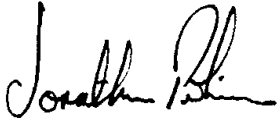
the view of society that relationships between husband and wife are relationships to promote and people who are married and who wish to be together, should be together. But that is subject to considerable qualification, mainly, in this case that the joining partner can be maintained without being a burden to the state. This is something which has to be proved in a particular way and, based on what I have been told, could be proved in a particular way. I see nothing disproportionate in the First-tier Tribunal deciding that even if the claims made on the evidence are true and that the money is payed as alleged, it would be wrong to allow the appeal on human rights grounds because the interference is not disproportionate. Such a decision gives effect to a policy which is intended to simplify decision making and also ensure that evidence of high quality is relied on. There is no evidence here to suggest that this is a case where there is a compelling or exceptional reason for husband and wife to be together. Occasionally, for example in cases where there has been a very severe illness, humanity requires a slightly more softened approach. However this is a case where the appellant would appear be able to satisfy the Rules if a proper application was made. The First-tier Tribunal Judge chose not to test that proposition because he said that it would have made no difference anyway. In the circumstances I find that an entirely permissible approach.

9. The judge did not err.
10. It is open to the appellant to apply again having gone to the trouble to get the evidence in the required form. I make no finding about the quality of that evidence. It was not before me, but if it stands up to scrutiny then the appellant can expect to succeed but that is not for me to decide now.

Notice of Decision

11. I see no error of law established by the First-tier Tribunal and I dismiss the appeal.

Signed
Jonathan Perkins
Judge of the Upper Tribunal



Dated 12 March 2019