



IAC-AH-SAR-V1

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

Appeal Number: HU/06803/2019

THE IMMIGRATION ACTS

**Decided under Rule 34 Without a Hearing
At Field House
On 23 October 2020**

**Decision & Reasons Promulgated
On 28 October 2020**

Before

UPPER TRIBUNAL JUDGE RINTOUL

Between

**CREGGA CEON SALMON
(NOANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DECISION AND REASONS

1. The appellant appeals with permission against the decision of First-tier Tribunal Judge M A Khan promulgated on 20 February 2020, dismissing his appeal under the Nationality, Immigration and Asylum Act 2002 against a decision of the respondent made on 21 March 2019 to refuse his human rights claim which, in turn is based the refusal of leave to enter the United Kingdom as the spouse of a person present and settled here.
2. The application was refused on the basis that the appellant had not shown: (a) that his relationship with his spouse was genuine and subsisting; and/or, (b) that the financial eligibility criteria were met.

3. On appeal, the judge found that the relationship was genuine and subsisting but found that the sponsor earned below the relevant threshold and that in any event, the specified documents required had not been produced.
4. The appellant sought permission to appeal on the grounds that the judge had erred, primarily in confusing the appellant's wife's taxable earnings with her gross earnings leading him to conclude wrongly that her income was only £8417, and failed, in evaluating the evidence of income, to apply the Evidential Flexibility rule to the documents (bank statements) omitted from a sequence and which had now been provided.
5. On 20 May 2020, First-tier Tribunal Judge Osborne granted permission on all grounds.
6. On 30 July 2020 Upper Tribunal Judge Norton-Taylor gave directions which provided amongst other matters:
 1. I have reviewed the file in this case. In the light of the present need to take precautions against the spread of Covid-19, and the overriding objective expressed in the Procedure Rules¹, I have reached the provisional view, that it would in this case be appropriate to determine the following questions without a hearing:
 - (a) whether the making of the First-tier Tribunal's decision involved the making of an error of law, and, if so
 - (b) whether that decision should be set aside.
 2. I therefore make the following DIRECTIONS:
 - (i) The appellant may submit further submissions in support of the assertion of an error of law, and on the question whether the First-tier Tribunal's decision should be set aside if error of law is found, to be filed and served on all other parties no later than **14 days after this notice is sent out** (the date of sending is on the covering letter or covering email);
 - (ii) Any other party may file and serve submissions in response, no later than **21 days after this notice is sent out**;
 - (iii) If submissions are made in accordance with paragraph (ii) above the party who sought permission to appeal may file and serve a reply no later than **28 days after this notice is sent out**.
 - (iv) All submissions that rely on any document not previously provided to all other parties in electronic form must be accompanied by electronic copies of any such document.
 3. Any party **who considers that despite the foregoing directions a hearing is necessary** to consider the questions set out in paragraph 1 (or either of them) above must submit reasons for that view no later than **21 days after**

¹ The overriding objective is to enable the Upper Tribunal to deal with cases fairly and justly: rule 2(1) of the Tribunal Procedure (Upper Tribunal) Rules 2008; see also rule 2(2) to (4).

this notice is sent out and they will be taken into account by the Tribunal.
The directions in paragraph 2 above must be complied with in every case.

7. Both parties made submissions in response to directions, the appellant stating that an oral hearing is necessary.
8. In her reply of 3 September 2020, the respondent conceded that there was a material error in the decision of the First-tier Tribunal. It was also conceded that the documentation provided established that the income threshold had been met (earnings being £42017 for tax year 2017/2018) and that the missing specified documents had now been provided at the hearing. The respondent then invited the Upper Tribunal to find that the requirements of the rules have been met on all counts which would be determinative of the appeal under article 8.
9. The Tribunal has the power to make the decision without a hearing under Rule 34 of the Procedure Rules. Rule 34(2) requires me to have regard to the views of the parties. Bearing in mind the overriding objective in Rule 2 to enable the Tribunal to deal with cases fairly and justly, and bearing in mind the concession by the respondent, I am satisfied that in the particular circumstances of this case that it would be correct to make a decision being made in the absence of a hearing.
10. I am satisfied that the judge did err in reaching his decision as is claimed in the grounds of appeal and as is accepted by the respondent. The decision clearly involved the making of an error of law as claimed as these errors went to the core of whether the requirements of the Immigration Rules are met and I set it aside. In the light of the respondent's concessions, no purpose is served in having any further hearing to remake the decision which I now proceed to do.
11. Given the concession by the respondent, fairly made, that the appellant meets all the requirements of the Immigration Rules, I am satisfied that that is so. In these circumstances, and in the light of the concession that this is determinative, I am satisfied that the refusal of entry clearance did breach the appellant's human rights and I allow the appeal on that basis.
12. As the respondent now concedes that the requirements of the rules are met, it appears appropriate that the appellant should be granted entry clearance on the basis that the Immigration Rules are met, putting him on the 5 year track to settlement.

Notice of Decision & Directions

- 1 The decision of the First-tier Tribunal did involve the making of an error of law and I set it aside.
- 2 I remake the decision by allowing the appeal on human rights grounds

Signed

Date 23 October 2020

Jeremy K H Rintoul
Upper Tribunal Judge Rintoul