



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

Case No: UI-2022-004152

HU/01435/2021

First-tier Tribunal No:

**THE IMMIGRATION ACTS**

**Heard at Field House**

**On 9 August 2023**

**Decision & Reasons  
Promulgated**

10<sup>th</sup> October 2023

**Before**

**UPPER TRIBUNAL JUDGE GLEESON  
UPPER TRIBUNAL JUDGE KOPIECZEK**

**Between**

**OKO PADIE KINGSLOVE  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr C. Rahman, Counsel instructed by Adam Bernard,  
solicitors

For the Respondent: Mr E. Tufan, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant is a citizen of Ghana, born in 1989. On 14 October 2020 he made an application for entry clearance under Appendix FM of the

Immigration Rules ("the Rules") on the basis of family life as a partner. That application was refused in a decision dated 24 January 2021.

2. The appellant appealed that decision and his appeal came before First-tier Tribunal Judge Athwal ("the Ftj") on 13 June 2022 following which his appeal was dismissed in a decision promulgated on 14 June 2022. The appeal was determined by the Ftj 'on the papers', as requested by the appellant, there having been no objection from the respondent.
3. Permission to appeal was granted by Upper Tribunal Judge Blundell on the basis that it was arguable that material evidence in terms of the sponsor's financial circumstances may have been overlooked by the Entry Clearance Officer ("ECO") and by the Ftj. Judge Blundell said in his grant of permission that the assertion that certain financial evidence was provided to, but overlooked by, the ECO, and therefore the Ftj, "must be" supported by a statement of truth made by the author of the grounds of appeal.

### ***The Ftj's decision***

4. The Ftj summarised the ECO's decision which asserted that the appellant did not submit all of the required financial documentation. Specifically, the ECO wrote to the appellant on 7 December 2020 and asked for payslips that covered the period from 15 July 2020 to 14 October 2020 but no response was received, according to the ECO's decision, and the appellant had not, therefore, established that he met the requirements of the Rules.
5. The Ftj also noted that the ECO had considered paragraph GEN. 3.1 and 3.2 of Appendix FM (wider Article 8 considerations).
6. The Ftj next referred to the grounds of appeal, which she quoted verbatim in terms of the assertion by the appellant that he had in fact replied to the email of 7 December 2020 and provided all the required documents. The Ftj referred to the documents that she had before her which included the appellant's response to the email of 7 December, other emails, payslips from two different organisations, and bank statements.
7. The Ftj gave appropriate self-directions on the law and set out the requirements of the Rules that the appellant needs to satisfy, in particular in terms of the financial requirements, but also with reference to the wider Article 8 considerations contained within paragraphs GEN.3.1 and 3.2, the Nationality, Immigration and Asylum Act 2002 ("the 2002 Act") at section 117B and relevant case law.
8. At [21] of her decision the Ftj said that she had considered the email dated 10 December 2020 sent by the appellant to the respondent (in response to the 7 December request for further information), found that it was sent to the correct email address and that it was sent within the specified five days. However, the question identified by the Ftj was whether the appellant met the financial eligibility requirements of the Rules.

9. The Ftj analysed the financial evidence. She noted that the sponsor had two employers and that the respondent accepted that the appellant had provided a complete set of payslips from her employer Samsic, but the respondent had asked for additional payslips from her employer the Compass Group, specifically from 15 July 2020 to 14 October 2020 (the date of the application).
10. The Ftj referred to the fact that the email dated 10 December 2020 from the appellant included an email dated 30 July 2020 from Levy UK which it said was part of the Compass Group and that the sponsor was on furlough until August 2020. The Ftj referred to payslips from 21 January 2021 to 17 February 2021 but said that she had “not been provided with bank statements that confirm remittances were paid into the sponsor’s account”.
11. At [25] she noted the appellant’s assertion in the December 2020 email that the sponsor was working extra hours with Samsic and she noted the amounts and dates of those payslips.
12. Finally, in terms of the documents provided, the Ftj referred to the fact that the sponsor was required to earn at least £18,600 per annum gross, to meet the financial requirements of the Rules but that the payslips from Samsic did not show that she was earning that amount. Thus, she concluded that the appellant did not meet the relevant requirements of the Rules.
13. She further concluded that neither paragraphs EX.1(b) nor GEN.3.2 availed the appellant as no evidence had been provided establishing insurmountable obstacles to family life continuing in Ghana or exceptional circumstances rendering the refusal of entry clearance a breach of Article 8 of the ECHR because of unjustifiably harsh consequences. She concluded that a consideration of s.117B of the 2002 Act did not reveal a breach of Article 8 outside the Rules.

### ***The grounds of appeal and submissions***

14. The grounds of appeal *upon which permission was granted* are contained within five short paragraphs of eight lines in total. The contention is that the appellant does meet the financial requirements of the Rules, that the bank statements, payslips, P60s and employer’s letter show this and that “Regrettably, these essential documents listed in the above paras. were overlooked by the ECO and the First-tier Tribunal Judge”.
15. Mr Rahman initially submitted that the P60s and payslips showed that the appellant did meet the requirements of the Rules and he referred to the fact that the appellant was furloughed during the Covid-19 pandemic. He then submitted that there were compassionate circumstances such that the appeal should otherwise have been allowed, submitted that evidence in support of that argument was attached to the appellant’s email(s), and

pointed out that compassionate circumstances was a matter mentioned by the ECO in the decision.

16. Mr Rahman then conceded, in response to questions from Upper Tribunal Judge Gleeson, that the appellant did not in fact meet the financial requirements of the Rules “for the whole period”. He submitted that a fresh application would take time and that given that the appellant and the sponsor are in a genuine relationship, and even though the appellant did not meet the financial requirements of the Rules for the whole period, as a matter of fairness the appeal should have been allowed with reference to Article 8.
17. In his submissions Mr Tufan accepted that a reply to the respondent’s email of 7 December was provided by the appellant but was not recorded by the respondent, although it was not clear what documents were provided. He submitted that in any event it was beyond doubt that the appellant was not able to meet the financial requirements of the Rules.

### ***Assessment and conclusions***

18. Because of the way that the grounds of appeal are framed, Judge Blundell required a statement of truth from the author of the grounds, no doubt because he was of the view that the grounds’ author was in a position to make good on the assertion that documents were “overlooked” by the ECO and the Ftj.
19. For some unexplained reason that direction was not complied with. Instead, a witness statement from the appellant has been provided which refers to his reply dated 10 December 2020, to the email from the respondent dated 7 December 2020. That witness statement was sent under cover of an email from the appellant’s solicitors.
20. That email, amongst other things states that:

“P60s for the year 2021 are also included but these documents at page 47 and 48 were not available when the Appellant was submitting his original application in 2020 at the visa application centre. Bank statements dated after submission of the original application were also not available at the time of making the application but we have enclosed these documents as they were sent to the First - tier Tribunal at the time of appealing the decision and we kindly ask the Upper Tribunal Judge to consider the documents as post decision documents.”
21. It is clear, therefore, that in support of this appeal the Upper Tribunal is asked to consider evidence that was not provided at the date of the application, contrary to Appendix FM-SE paragraph D, which is subject to exceptions that are not said to apply here.
22. In any event, the Ftj did look at the email of 10 December sent in response to the request for further evidence, and the documents that were provided with it. What specific documents the Ftj “overlooked” or failed to

consider are not identified. The author of the grounds of appeal has not complied with the direction to explain the matter further.

23. That aside, we cannot see that any documents were overlooked, at least not by the Ftj who undertook a careful analysis of the documentary evidence before her. It may well be that the assertion in the grounds of appeal that evidence was “overlooked” is simply an assertion that the Ftj came to an erroneous conclusion on the documents before her, but since the author of the grounds did not comply with Judge Blundell’s direction that assertion remains unexplained.
24. Neither the grounds of appeal nor the submissions before us identify the any error in the Ftj's analysis of the documentary evidence before her referable to the date of the application, with specific reference to the documents she considered. Indeed, as already indicated in our summary of the submissions before us, it was conceded before us that the appellant did not meet the financial requirements of the Rules.
25. As regards the submission that the appeal should have been allowed on the basis of “compassionate circumstances” under a wider consideration of Article 8, that is not a matter raised in the grounds of appeal to the Upper Tribunal and, necessarily, not a matter upon which permission to appeal was granted.
26. In any event, it is clear from [28]-[32] of the Ftj's decision that she gave specific consideration to those aspects of the Rules which cater for circumstances where aspects of the Rules are not otherwise met, in this case the financial requirements. She considered paragraphs EX.1(b) and GEN.3.2 of the Rules, as well as s.117B of the 2002, and conducted an Article 8 proportionality assessment taking all relevant matters into account.
27. In summary, we are not satisfied that the appellant has established that the Ftj erred in law in any respect.

### ***Decision***

28. The decision of the First-tier Tribunal did not involve the making of an error on a point of law. Its decision to dismiss the appeal therefore stands.

A.M. Kopieczek

Upper Tribunal Judge Kopieczek

6/10/2023