



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

Appeal Number: OA 03628 2013

**THE IMMIGRATION ACTS**

**Heard at Field House**

**On 24 April 2014**

**Determination**

**Promulgated**

**On 27 June 2014**

**Before**

**UPPER TRIBUNAL JUDGE PERKINS**

**Between**

**ENTRY CLEARANCE OFFICER WARSAW**

Appellant

**and**

**LIRJETA SEFEDINI**

Respondent

**Representation:**

For the Appellant: Mr N Bramble, Senior Home Office Presenting Officer

For the Respondent: Ms P Yong, Counsel instructed by MetroLaw Solicitors

**DETERMINATION AND REASONS**

1. This is an appeal by the Entry Clearance Officer against the decision of the First-tier Tribunal allowing the appeal of the respondent, who I will call the claimant, against the decision of the Entry Clearance Officer refusing her entry clearance to the United Kingdom as the wife of a person present and settled there.
2. The application was refused because the claimant had not supported her application with certain accounting documents specified in the Rules. In particular she had not produced an annual self-assessment tax return or statement of account or particular bank statements from her husband to prove that he was in a position to support her financially in the United Kingdom.
3. The appeal came before a First-tier Tribunal Judge who I know is an extremely experienced immigration practitioner. She was satisfied on the evidence before her that the claimant would be supported more generously or more substantially than the Rules required by her husband

who, the judge found, was successful in his business and more than able to provide the money required. She therefore allowed the appeal on human rights grounds.

4. It is very easy to see why she has made the decision that she did. The United Kingdom is under an obligation to promote a person's private and family life. Generally there is a strong public interest in promoting a genuine marriage. A countervailing factor may be that the appellant would have to be supported by the state but that simply does not exist here. The evidence is clear. The claimant would be supported by her husband.
5. The problem is that the decision to refuse the application was wholly lawful. The Immigration Rules have been changed so that there are very precise requirements about what must be produced to support an application and a failure to comply with those requirements according to the Rules will lead to the decision being refused. There was no possible basis for criticising the decision of the Entry Clearance Officer except on human rights grounds. We have been told on many occasions by the Higher Courts and indeed the Tribunal's own jurisprudence, that human rights are not there as a near-miss mechanism to allow a person to succeed in an application that does not quite meet the requirements of the Rules.
6. According to the Entry Clearance Officer the First-tier Tribunal should have made a clear finding that the applicant could not succeed under the Rules and then asked herself if there were compelling or exceptional circumstances that made it appropriate to allow the appeal on human rights grounds. The First-tier Tribunal Judge did not do that. I agree with the Entry Clearance Officer that she should have done. This is made clear in Gulshan (Article 8 - new Rules - correct approach) Pakistan [2013] UKUT 640 (IAC). The decision in Gulshan declares the law but it published on the same day as the Tribunal's decision was promulgated. Clearly the First-tier Tribunal did not know about it. She would have expressed herself differently if it had been before her.
7. Miss Young has drawn my attention to paragraph 22 of the determination where there is reference to authority and the observation that the sponsoring husband has indefinite leave to remain and has built up a successful business and was contributing to the economy through his tax and providing a public service as a taxi driver and was interrupting these things to travel to Prestina to preserve his relationship with his wife. I do not see how these things can be seen as compelling or exceptional circumstances. They are the kind of things that can be expected of anybody in regular work who would be making a contribution to the community. I do not see now having to choose between living and working in the United Kingdom or living outside the United Kingdom to be with a wife can be described properly as compelling and exceptional circumstances within the meaning of the Rules.
8. It is always possible that a person would be able to show on human rights grounds compelling or exceptional reasons to succeed even when they cannot meet the strict requirements of the Rules but there was nothing

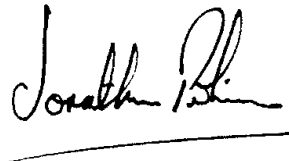
before me to suggest there was any compelling reason to allow the application now. The appellant should have delayed her application until her husband had accumulated the evidence required by the rules.

9. I am aware of the decision of the High Court in MM, R (On the Application Of) v Secretary of State for the Home Department [2013] EWHC 1900 (Admin). The First-tier Tribunal Judge referred to it in her determination but did not purport to follow it. For my part I think that there are still issues to decide concerning the correct approach when it seems that a person will never be able to raise the funds required by the rules but will be maintained. This instant case is about waiting until the rules can be met. I cannot see how such waiting can be described properly as "disproportionate". There is a strong public interest in preserving the proper system of immigration control which involves the consistent application of the Rules. Here there will be delay before a person can make a successful application but, in the absence of compelling circumstances of a kind that are not suggested here, I see no basis for allowing it on human rights grounds.
10. If the documents are as they appear to be there seems to be no reason at all why a future application cannot succeed. Certainly nothing has happened in these proceedings that in any way undermine the integrity of the claimant or her husband.
11. I remind myself that this decision I am making will be disappointing to the claimant and I remind myself that I must not interfere with the decision of the First-tier Tribunal merely because it is not the one that I would have made. I must be satisfied that it was wrong but for the reasons given, in my judgment the First-tier Tribunal judge misdirected itself or wrongly applied the law to the facts and reached a conclusion that was not open to her and I therefore allow the appeal of the Entry Clearance Officer.
12. I set aside the decision of the First-tier Tribunal and I substitute a decision dismissing the claimant's appeal against the decision complained of.

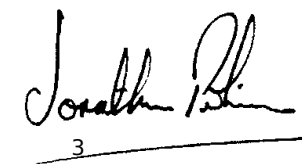
### **Decision**

The Entry Clearance Officer's appeal is allowed. I substitute a decision dismissing the claimant's appeal against the Entry Clearance Officer's decision.

Signed  
Jonathan Perkins  
Judge of the Upper Tribunal



Dated 25 June 2014



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