



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

Appeal Number: OA/05360/2013

THE IMMIGRATION ACTS

**Heard at Glasgow
on 7 March 2014**

**Determination issued
On 04 April 2014**

Before

**MR C M G OCKELTON, VICE PRESIDENT
& UPPER TRIBUNAL JUDGE MACLEMAN**

Between

UMAIR HAMEED

Appellant

and

ENTRY CLEARANCE OFFICER, Pakistan

Respondent

For the Appellant: Mr Shoaib, of Shoaib Associates
For the Respondent: Mr Parkinson, Senior Home Office Presenting Officer

No anonymity order requested or made

DETERMINATION AND REASONS

- 1) The appellant appeals against a determination by Judge McGavin, promulgated on 21 October 2013, dismissing his appeal against refusal of entry clearance as the partner of a British citizen.
- 2) The point at issue is whether the judge was right to base her decision on the sponsor's income as shown in her last two tax returns, or whether she should have allowed the appeal by reference to the sponsor's income averaged over the last two accounting years of her business.
- 3) This depends on the following part of the Immigration Rules:

Evidence of Financial Requirements under Appendix FM

...

7. In respect of self-employment in the UK as a partner, as a sole trader or in a franchise all of the following must be provided:

(a) Evidence of the amount of tax payable, paid and unpaid for the last financial year.

(b) The latest:

(i) annual self-assessment tax return to HMRC (a copy or print-out);

(ii) Statement of Account (SA300 or SA302); and,

(iii) the same for the previous financial year if the latest return does not show the necessary level of gross income, but the average of the last 2 financial years does.

- 4) Mr Shoib said that businesses may choose their own financial accounting year (which is correct), and that he had relied on information from the sponsor's accountants of her income for two such years. She could not show the necessary income by averaging over two tax years, because her business did not begin until the first half of the first tax year had already gone by.
- 5) The Rules do not bear the construction which Mr Shoib sought to put upon them. The financial year for these purposes is the tax year (in this case, the years to 5 April 2011 and 5 April 2012) not the year which the sponsor selected for accounting purposes. It is the latest tax return which must show the necessary level of gross income, with the alternative of averaging the two most recent such returns.
- 6) We have reservations over the reasons given by the judge for her Article 8 decision at paragraph 22. We do not think that section 113 of the 2003 Act excludes human rights issues when an appellant is outside the UK. That section has other purposes. However, there is no need for further analysis. The grounds do not raise that point. Although they do refer generally to Article 8 of the ECHR, Mr Shoib advisedly did not make any submissions thereon. The effect of the adverse decision is simply that the appellant has to re-apply if and when the requirements of the Rules can be met. That cannot be a disproportionate interference.
- 7) The determination of the First-tier Tribunal does not err in law in any respect which requires it to be set aside, and it shall stand.



3 April 2014
Judge of the Upper Tribunal