



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: OA/05408/2013

**THE IMMIGRATION ACTS**

Heard at Field House  
On 21 July 2014

Determination Promulgated  
On 8 August 2014

Before

UPPER TRIBUNAL JUDGE PINKERTON

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MRS ARBNORE KONJUVCA  
(ANONYMITY DIRECTION NOT MADE)

Respondent

**Representation:**

For the Appellant: Mr I Jarvis  
For the Respondent: Ms Cole-Wilson

**DETERMINATION AND REASONS**

1. For ease and continuity I refer to the parties hereafter as they were before the First-tier Tribunal so that Mrs Konjuvca is the appellant and the Secretary of State for the Home Department, the respondent.

2. The appellant was refused entry clearance under Appendix FM of HC 395 (as amended) to come to the United Kingdom on the basis of her marriage to Mr A Konjuvca. The sole reason for refusal was that the sponsor, Mr Konjuvca, was said to be unable to meet the strict financial requirements of the Rules regarding proof of income.
3. The matter came before First-tier Tribunal Judge Elliman. In a determination promulgated on 22 April 2014 the appeal was allowed under the Immigration Rules.
4. The respondent sought permission to appeal that decision on the basis that although it was clear that at the date of application the sponsor's actual gross annual income was below the necessary threshold, and as a result the maintenance requirements could not be fulfilled, the Tribunal nevertheless found wrongly that it was entitled to consider the evidence of the circumstances of the sponsor at the date of the decision.
5. Permission was granted on the basis that it was arguable that in failing to consider the (financial) situation at the date of application the judge erred.

### **My Deliberations**

6. At paragraph 9 of the determination the judge states that it was not necessary to hear oral evidence as the only issue related to the documentation provided by the sponsor and his status as either employed or self-employed. The judge found that the matter had been addressed by the evidence submitted with the application and in the appellant's further appeal bundle.
7. Later in paragraph 9 the judge set out an extract from paragraph 2 of Appendix FM-SE of the Rules. Although setting out those requirements the judge does not show how the appellant meets that part of the Rules.
8. The Rules stipulate at FM-SE D that the date of application is the relevant date for provision of the required evidence, save for certain exceptions that do not apply here. Paragraph 10 of the determination does not deal with the point at all. The judge finds that at the time of the application the sponsor had only just started to earn the higher salary that would bring the appellant within the requirements of the Rules, but because the judge was entitled to consider the evidence of the circumstances at the date of decision that meant that the appellant met those requirements. She did not because the rules required the appellant to provide the relevant evidence with the application. What was provided showed that the sponsor had not met the rule requiring him to provide payslips from his current employer covering a period of 6 months prior to the date of application.
9. The alternative method of proving sufficient funds available to him to allow the appellant to meet the rules would have been to provide evidence of any period of salaried employment in the period of 12 months prior to the date of application together with a letter from the employer who issued the payslips confirming certain details. He needed to provide also personal bank statements showing that the salary has been paid into that account, all of which is detailed in Appendix FM-SE.

10. The judge found that the sponsor had only just started to earn the salary that would meet the requirements as to sufficiency of earnings but did not make any findings and to how he met the other parts of the rule as quoted by the judge at paragraph 9 of the determination. In coming to her findings in favour of the appellant in the manner and for the reasons that she does, the judge clearly fell into error and the decision has to be set aside, as I announced at the hearing.

### **The further hearing**

11. Ms Cole-Wilson was not in a position to show that the evidence provided could lead to a conclusion that the appellant met the requirements of the Rules at the relevant time. It is clear from the sponsor's statement (paragraph 15) that at the date of application, which was 12 September 2012, the sponsor's salary had increased to £20496.00 but had only done so from 1 September 2012. Prior to the date of application it had been below the minimum required of £18600.00, at £16800.00 per annum. For that reason the maintenance requirements could not be fulfilled and the appellant could not succeed in the appeal.
12. If, as appears possible, or even likely, the sponsor's income is now above the relevant threshold a further application by the appellant may be successful. However, that is not a matter for me to decide.

### **Decision**

13. For the above reasons the decision of the First-tier Judge is set aside and for it is substituted a decision that **the appeal is dismissed under the Immigration Rules.**
14. No anonymity direction has previously been made and none was applied for. I do not find that the circumstances warrant one being made and therefore I do not do so.

Signed

Date

Upper Tribunal Judge Pinkerton