



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: OA/11319/2013

THE IMMIGRATION ACTS

Heard at Manchester
On September 4, 2014

Determination Promulgated
On September 5, 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE ALIS

Between

ENTRY CLEARANCE OFFICER

Appellant

and

MRS MARIA SILVINA PATARO

Respondent

Representation:

For the Appellant: Mr Harrison (Home Office Presenting
Officer)

For the Respondent: Miss Evans (legal Representative)

DETERMINATION AND REASONS

1. Whereas the respondent is the appealing party, I shall, in the interests of convenience and consistency, replicate the nomenclature of the decision at first instance.

2. The appellant, born April 15, 1963, is a citizen of Argentina. On January 16, 2013 she applied for entry clearance as the spouse of a person settled in the United Kingdom.
3. The respondent refused her application on April 25, 2013 as she was not satisfied:
 - a. The appellant and sponsor were in a genuine and subsisting relationship (Section E-ECP 2.6 and 2.10 of Appendix FM).
 - b. The appellant and sponsor satisfied the financial requirements of the Immigration Rules (Section E-ECP 3.1 of Appendix FM).
 - c. The English language requirements of the Rules were met (Section E-ECP 4.1 of Appendix FM)
4. On May 20, 2013 the appellant appealed under Section 82(1) of the Nationality, Immigration and Asylum Act 2002. The respondent reviewed the original decision and whilst accepting the parties were in a genuine and subsisting relationship she maintained her objections on the other grounds.
5. The matter was listed before Judge of the First-tier Tribunal Hague (hereinafter referred to as “the FtTJ”) on March 26, 2014 and in a determination promulgated on April 10, 2014 he refused the appeal under the Immigration Rules but allowed the appeal under article 8 ECHR.
6. The respondent appealed that decision on May 13, 2014. Permission to appeal was granted by Judge of the First-tier Tribunal Fisher on June 20, 2014. He found the FtTJ may have erred for the reasons set out in the grounds but also noted the FtTJ had applied the wrong provisions of the 2002 Act when considering what evidence could be admitted.
7. The appellant’s Rule 24 response dated July 7, 2014 challenged the respondent’s grounds of appeal and also cross-appealed on the basis the FtTJ had applied the wrong test when considering what evidence should be admitted and submitted the FtTJ had erred by refusing to allow the appeal under the Immigration Rules.
8. Mr Harrison addressed me on his grounds of appeal and invited me to find an error of law. However, I raised with him the point about Section 85A(3) of the 2002 Act and in particular paragraph [8] of the FtTJ’s determination. It was clear the FtTJ

had applied section 85A(3) which only applied to PBS applications. This appeal was a spouse entry clearance application and was governed solely by Section 85(5) of the same act. Mr Harrison agreed that the FtTJ erred when stating in paragraph [8] that the relevant date was the date of application and he accepted that if the appellant satisfied the Rules at the date of decision (after consideration of any relevant documents admissible under DR (ECO): Post Decision Evidence (Morocco) [2005] UKIAT 00038) then the FtTJ would have erred in refusing the application under the Immigration Rules.

9. I stood the matter down for the representatives to consider all the documents before the FtTJ. After a short break Mr Harrison confirmed that he was satisfied the appellant met the Immigration Rules and that all the specified evidence in Appendix FM-SE had been before the FtTJ at the hearing date.
10. Mr Harrison accepted the appellant's appeal should be allowed under the Immigration Rules. He indicated he did not intend to pursue his appeal and he applied under Rule 17(1)(b) of the Tribunal Procedure (Upper Tribunal) Rules 2008 to withdraw his appeal. I agreed to this request.
11. For the avoidance of doubt I am satisfied:
 - a. The appellant and sponsor were in a genuine and subsisting relationship.
 - b. They had provided all the specified documents in Appendix FM-SE and had demonstrated the sponsor earned over £18,600.
 - c. The appellant had the appropriate English language certificate.

DECISION

12. There is a material error of law and I set aside the original decision in respect of the Immigration Rules.
13. I have remade the decision under the Immigration Rules and I allow the appeal under the Immigration Rules and I direct the appellant be issued with the appropriate visa.
14. Under Rule 14(1) The Tribunal Procedure (Upper Tribunal) Rules 2008 (as amended) the appellant can be granted anonymity throughout these proceedings, unless and until a

tribunal or court directs otherwise. No order has been made and no request for an order was submitted to me.

Signed:

Dated:



Deputy Upper Tribunal Judge Alis

TO THE RESPONDENT

A fee award had already been made and I uphold that decision.

Signed:

Dated:



Deputy Upper Tribunal Judge Alis