



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

OA/13223/2013

Appeal Number

THE IMMIGRATION ACTS

Heard at Field House  
On 10<sup>th</sup> July 2014  
Prepared 15<sup>th</sup> July 2014

Determination Promulgated  
On 16<sup>th</sup> July 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE PARKES

Between

SHIANG HORNG LAU  
(ANONYMITY DIRECTION NOT MADE)

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

For the Appellant: No appearance

For the Respondent: Ms L Kenny (Home Office Presenting Officer)

DETERMINATION AND REASONS

1. The Appellant applied for entry clearance as a spouse. The application was refused on the grounds that the Appellant had not submitted evidence to show that she met the maintenance requirements of Appendix FM. In reaching that conclusion the ECO rejected the statements from the Appellant's DBS account as the statements did not cover the full 6 months required, running from the 16<sup>th</sup> of November 2012 to the 30<sup>th</sup> of November 2013.
2. The Appellant's appeal was heard by First-tier Tribunal Judge McWilliam on the 11<sup>th</sup> of December 2013 and dismissed in a determination promulgated on the 24<sup>th</sup> of December 2013. The Judge found that statements for the DBS account were missing from January to April 2013. He analysed the other financial information and found against the Appellant.
3. The application for permission to appeal to the Upper Tribunal relied on 3 grounds, the claimed failure to consider relevant bank statements, article 8 outside the rules and whether the results were unjustifiably harsh. Permission was granted by Designated First-tier Tribunal Judge French on the 20<sup>th</sup> of May 2014 although he noted that the determination was careful and logically reasoned.

4. There was no appearance at the hearing before the Upper Tribunal. The Appellant's representatives were contacted and indicated that they were no longer acting for the Appellant. The correspondence file in the Upper Tribunal papers indicated that the Appellant, the representatives and the Sponsor had all been informed of the hearing. In the circumstances I was satisfied that the Appellant had had sufficient opportunity to either attend or to make written submissions and that the hearing could fairly continue in her absence.
5. Having considered the papers there was a technical error in the determination in that it appeared that in the papers the DBS statements for early 2013 were available, it is not clear how they were not brought to the Judge's attention.
6. However that does not affect the determination in any material way. The DBS statements were infected by the problem identified by the Secretary of State, they did not cover the 6 month period required beginning in mid November 2012 and running to the end of April 2013. On that basis the Appellant had not submitted the specified evidence required and the Judge's analysis of the other documents is correct.
7. Since the hearing the Court of Appeal decision in MM (Lebanon) [2014] EWCA Civ 985 has come out. That establishes that the financial requirements of the Immigration Rules are to be applied as they stand. It is open to the Appellant to re-apply submitting the evidence required, there is no merit in the second and third grounds of appeal to the Upper Tribunal.
8. On a proper reading the determination of the First-tier Tribunal did not contain any material error of law.

## CONCLUSIONS

The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.

I do not set aside the decision.

### Anonymity

The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005 and I make no order.

### Fee Award

In dismissing the appeal I make no fee award.

Signed:

Deputy Judge of the Upper Tribunal (IAC)

Dated: 16<sup>th</sup> July 2014