



**Upper Tribunal  
(Immigration and Asylum Chamber)  
OA/15547/2013**

**Appeal No:**

**THE IMMIGRATION ACTS**

**Heard at Field House  
Determination Promulgated  
on 12 August 2014  
26 August 2014**

**on**

**Before**

**DEPUTY JUDGE OF THE UPPER TRIBUNAL DIGNEY**

**Between**

**ENTRY CLEARANCE OFFICER - BOMBAY**

Appellant

and

**MOHAMMED SHOAIB MALIK**

Respondent

**Representation:**

For the appellant: Mr Duffy, Home Office Presenting Officer  
For the respondent: Mr Malik

**DETERMINATION AND REASONS**

1. The respondent, a citizen of India, applied for entry clearance as the partner of a person present and settled in this country. That application was refused and an appeal against the decision allowed. The entry clearance officer concluded that the sponsor could not provide the evidence demanded by Appendix FM-SE that the financial requirements of the rules were met. The judge accepted the evidence of the sponsor that the financial requirements of the rules could be met.
2. The grounds of appeal argue that Appendix FM-SE sets out comprehensively what types of evidence are required, and one matter that is demanded is bank statements that cover the same six months as

the pay slips that have been produced. With regard to the employment with Hafiz Foods these bank statements have not been produced.

3. Permission to appeal was granted on the basis that the judge had not explained how the requirements of Appendix FM-SE had been met. Mr Malik accepts that the bank statements required by paragraph 2(c) have not been provided. He argues that as the sponsor was paid in cash they could not be provided. Mr Duffy points out that there would be nothing to stop the sponsor paying the money into the bank herself. Be that as it may, it seems to me that the requirement is, on the face of it absolute.
4. Mr Malik then argues that 2A(i) of the appendix gives the decision maker a discretion to grant an application if a P60 has not been provided. Mr Malik says that there is a discretion there so why should there not be one here. This part of the appendix covers a very limited area and is not one of the required documents. This gives no support for a general discretion to conclude that the requirements are met in the absence of the specified documents.
5. I conclude that the need for the required documents is absolute and the judge erred in law in reaching the conclusion that the respondent (through the sponsor) could meet the financial requirements without producing the required evidence.
6. It follows that the judge erred in law with regard to the Immigration Rules and a decision must be substituted dismissing the appeal as far as the rules are concerned. Mr Duffy accepts that the judge failed to deal with article 8 and agrees that that matter must be remitted to the First-tier Tribunal for a decision. Whether the findings of the judge of first instance can be relied on at that hearing will be a matter for the judge hearing the case to decide, bearing in mind that these findings were made on an impermissible basis.
7. It follows that the original judge made an error of law with regard to the decision under the Immigration Rules and a decision is substituted dismissing the appeal under the rules. The question of article 8 is remitted to the First-tier Tribunal for a decision on that point.

**The appeal is accordingly allowed to that extent**

Designated Judge Digney  
Judge of the Upper Tribunal  
15 August 2014