



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

Appeal Number: OA/24528/2012

THE IMMIGRATION ACTS

**Heard at Field House
On 12 March 2014**

**Determination Promulgated
On 12 June 2014**

**Before
DEPUTY JUDGE DRABU CBE**

**Between
MRS SHAZIA SOHAIL**

Appellant

and

ENTRY CLEARANCE OFFICER, ISLAMABAD

Respondent

ANONYMITY DIRECTION NOT MADE

DETERMINATION AND REASONS

Representation:

For the appellant: Mr M Iqbal of Counsel instructed by Denning Solicitors,
(Barking Road)

For the Respondent: Miss A Everett, Senior Presenting Officer

1. This appeal has been brought to the Upper Tribunal by the Entry Clearance Officer (the respondent at the first -tier Tribunal) against the decision of Judge Lingham who allowed her appeal against the respondent's decision refusing her entry clearance to join her husband in the UK for settlement. For the sake of consistency the parties are referred to in this determination in the same way as they were before the first tier.
2. The appellant is a national of Pakistan. She was born on 11 December 1983. She was refused entry clearance to join her husband in the UK for settlement on the sole ground that she had not satisfied the respondent about her husband's ability to maintain her in the United Kingdom. She had applied for entry clearance on 20 September 2012 and her application was turned down on 6

November 2012. In her application for entry clearance the appellant had stated that Radio Cars Ltd employs her husband at an annual salary of £19,200.00.

3. The respondent in his refusal letter stated, "You say in your Appendix 2 that your sponsor is employed with radio cars Ltd since 01/05/2012 and earns a gross annual salary of 19,200 per annum. However you have not provided all of the specified documents required regarding your sponsor's employment. These documents are specified in the Immigration Rules in Appendix FM-SE and must be provided." The respondent went on to say, "Furthermore as your sponsor was not employed at Radio Cars for six months at the time of application and no evidence of any previous employment has been provided it appears that prior to starting at Radio Cars your sponsor's annual income was less than (sic) £18,600. Therefore I am not satisfied that your sponsor's income in the last 12 months prior to the application was £18,600 as required. Based on the evidence provided I therefore refuse your application under paragraph EC-P.1.1 (d) of Appendix FM of the Immigration Rules (E-ECP.3.1)."
4. The First Tier Judge, Judge Lingham allowed the appeal. She received substantial documentary evidence in support of the appeal from the sponsor including his contract of employment dated 6 November 2012, payslips from May 2012 to October 2012, sponsor's account of income and expenditure. The Judge found that "the requirement on salaried employment was introduced on 13 December 2012. The significance of the date is that the appellant's application was lodged before the introduction of the above specified evidence on 'salaried employment'." In the alternative the Judge found that the Respondent should have but did not exercise any discretion to contact the appellant according to her Policy or the Rules and therefore, the decision is not in accordance with the law or the Rules. Judge Lingham referred to and relied on the decision of **Rodriguez [20130 UKUT 00042 (IAC)]**.
6. I heard submissions from Miss Everett and Mr Iqbal. Miss Everett relied and expanded on her grounds of appeal. Mr Iqbal argued that according to Section 85 (2) and the decision in DR (Morocco) it is the date of decision and not the date of application that is relevant in this matter. He submitted that the immigration rule advanced by the respondent is at best ambiguous and that the decision of Judge Lingham is not in error of law.
7. Having given careful consideration to all the relevant matters, including the grounds of appeal and the decision granting permission to appeal, I have concluded that the decision of Judge Lingham is in material error of law in that she failed to apply the immigration rule relevant to the case. The respondent's ground 2 and 3 are made out. Although the Judge correctly held that HC760 as

amended on 13.12.2012 did not apply to the case, she did not fully apply the provision that had been changed by HC760. Had she done so she would have inevitably concluded that a number of evidentiary items that were required to be submitted with the application had not been filed. On that basis the Judge was wrong to conclude as she did in paragraph 21 of her determination, "Therefore, I accept that when the appellant lodged her application, she merely had to show at the date of application that her spouse was suitably employed and that his income would have been adequate under the Rules to maintain the appellant and himself without having recourse to public funds. Given the evidence before me, I accept that the appellant had met the sole requirement in the appeal." There can be little doubt that in the course of the appeal proceedings the appellant had produced all the relevant evidence but she had not done so as required by the Rules at the time of the application or even at the time of the impugned decision.

8. The Judge cannot be criticised for relying on **Rodriguez [2013] UKUT 00042 (IAC)** that was good law at the time of her decision but has been subsequently reversed by the Court of Appeal.
9. I set aside the decision of Judge Langham as being in material error of law and in remaking the decision; I have no option but to dismiss the appeal against the decision of the respondent for the reasons given hereinabove. I very much hope that the respondent will determine a fresh application from the appellant, if it is made, on a priority basis as she meets all the requirements of the Rules now.

FEE AWARD

The decision on fee award made by Judge Langham is also set aside as the appeal has been dismissed.

ANONYMITY DIRECTION

None has been sought and circumstances of the case do not warrant such direction.

Judge Drabu

Judge of the First Tier Tribunal sitting as Deputy Judge of the Upper Tribunal.

10 June 2014