Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: OA/02780/2014

THE IMMIGRATION ACTS

Heard at Field House
On 6 August 2015

Decision and Reasons Promulgated
On 20 August 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE RAMSHAW

Between

ENTRY CLEARANCE OFFICER – NEW DELHI

Appellant

And

MR PARAMVIR SINGH
(ANONYMITY DIRECTION NOT MADE)

Respondent

Representation:
For the Appellant: Ms Pal, a home office presenting officer
For the Respondent: Ms Solanky of counsel

DECISION AND REASONS FOR FINDING A MATERIAL ERROR OF LAW

Introduction

1. This is an appeal by the Entry Clearance Officer. To avoid confusion I refer to the Entry Clearance Officer as "the respondent" and Mr Singh as "the appellant", their designations before the First-tier Tribunal.

2. Mr Singh is a citizen of India and his date of birth is 4 September 1988. He applied for leave to enter the United Kingdom as the spouse of a British citizen. He is

married to the sponsor Harinder Kaur Samra (married on 23 August 2013 in India). Subsequent to the application for leave to enter their daughter Jasmeet was born on 10 May 2014 in the UK. She is a British citizen. The Entry Clearance Officer refused the application on 28 January 2014 on the basis that the appellant had not provided the information requested regarding the sponsor's salary, that the appellant did not meet the financial requirements and that he was not satisfied that the appellant was in a genuine, subsisting relationship. The appellant appealed against that decision to the First-tier Tribunal.

3. At the hearing I heard submissions from Ms Pal on behalf of the Entry Clearance Officer and Ms Solanky on behalf of Mr Singh.

The First-tier Tribunal Judge's Decision

4. The First-tier Tribunal, Judge Lucas ('the judge'), allowed the appeal against the Entry Clearance Officer's decision. By the time of the hearing the Entry Clearance Officer accepted that the relationship requirements of the rules was met. The judge recorded that the issues were whether the financial requirements were met and whether it is proportionate for the sponsor to relocate to India to join the Appellant. The judge allowed the appeal finding that the appellant fulfilled the financial requirements of the Immigration Rules. The judge also found that the refusal of entry clearance was disproportionate and would have allowed the appeal under Article 8 of the ECHR.

Permission to Appeal

5. The Entry Clearance Officer applied to the First-tier Tribunal for permission to appeal the decision. Permission to appeal was granted by First-tier Tribunal Judge Pirotta.

Legal Framework

6. The relevant Rules on specified evidence are set out in Appendix FM-SE of the Immigration Rules - Paragraph E-ECP.3.1

> 'Financial requirements
>
> The applicant must provide specified evidence, from the sources listed in paragraph E-ECP.3.2., of-
>
> (a) a specified gross annual income of at least-
>
> (i) £18,600;
>
> (ii) an additional £3,800 for the first child; and
>
> (iii) an additional £2,400 for each additional child; alone or in combination with
>
> (b) specified savings of-
>
> (i) £16,000; and

(ii) additional savings of an amount equivalent to 2.5 times the amount which is the difference between the gross annual income from the sources listed in paragraph E-ECP.3.2.(a)-(d) and the total amount required under paragraph E-ECP.3.1.(a); or…'

7. As a result of the amendments which came into force on 28 July 2014, inserted by section 19 of the Immigration Act 2014, the Nationality, Asylum and Immigration Act 2002 ('the 2002 Act') now requires the Tribunal to take certain factors into account when determining whether a decision made under the Immigration Acts breaches respect for private and family life. The decision in the instant case is a decision made under the Immigration Acts. The relevant provisions provide:

117A Application of this Part

(1) This Part applies where a court or tribunal is required to determine whether a decision made under the Immigration Acts—

(a) breaches a person's right to respect for private and family life under Article 8, and

(b) as a result would be unlawful under section 6 of the Human Rights Act 1998.

(2) In considering the public interest question, the court or tribunal must (in particular) have regard—

(a) in all cases, to the considerations listed in section 117B, and

(3) In subsection (2), "the public interest question" means the question of whether an interference with a person's right to respect for private and family life is justified under Article 8(2).

117B Article 8: public interest considerations applicable in all cases

(1) The maintenance of effective immigration controls is in the public interest.

…

(3) It is in the public interest, and in particular in the interests of the economic well-being of the United Kingdom, that persons who seek to enter or remain in the United Kingdom are financially independent, because such persons—

(a) are not a burden on taxpayers, and

(b) are better able to integrate into society.

(4) Little weight should be given to—

(a) a private life, or

(b) a relationship formed with a qualifying partner

that is established by a person at a time when the person is in the United Kingdom unlawfully.

(5) Little weight should be given to a private life established by a person at a time when the person's immigration status is precarious.

(6) In the case of a person who is not liable to deportation, the public interest does not require the person's removal where—

(a) the person has a genuine and subsisting parental relationship with a qualifying child, and

(b) it would not be reasonable to expect the child to leave the United Kingdom.

8. Article 8 of the ECHR states:

(i) Everyone has the right to respect for his private and family life, his home and his correspondence.

(ii) There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

Error of Law

9. The jurisdiction of this tribunal on an appeal from the First-tier Tribunal is limited to points of law (s 11 of the Tribunals, Courts and Enforcement Act 2007). Generally the Upper Tribunal will not interfere with the decision of the First-tier Tribunal, if an error of law is found, unless that decision is material to the outcome of the appeal.

10. Two discrete grounds of appeal have been raised namely, the correct application of the Immigration Rules HC 395 (as amended) ('the Immigration Rules') and the approach and findings of the judge on Article 8.

The correct interpretation of the Immigration Rules

11. Ms Pal submitted that the judge had erred in the approach to the financial requirements in the Immigration Rules. Although not specified in the grounds of appeal, Ms Pal submitted that the judge erred by applying a simple addition of gross annual income plus savings. The correct approach is to calculate the shortfall in the income then to calculate the savings required which will be £16,000 plus 2.5 x the shortfall amount, not merely 2.5 x the shortfall. Ms Solanky submitted that this approach was incorrect. The £16,000 requirement in the rules only applies where there is no income. She submitted that the Secretary of State did not understand the rules. The multiplication factor applies to the shortfall because that is the shortfall that is needed for the period of the visa, namely 2 ½ years. The savings compensate for the shortfall. This was the sensible approach. Ms Solanky went through the relevant rules. All the appellant needed to show was that £18,600 was available for 2/5 years. There is no requirement to have an additional £16,000. She submitted that the £16,000 only came into play if there was no income and people were relying solely on savings.

12. Neither representative was able to refer to any authority on the point.

13. I have considered the case of MM, R (On the Application Of) v The Secretary of State for the Home Department [2013] EWHC 1900 (Admin)[1]. This case concerns the lawfulness of the financial requirements in the Rules – the same requirements that are in issue in the instant case. It is not authority on the point as the method for calculating the required amount under the rules was not in issue. However, it sets out the how the calculation is carried out under the rules - at paragraph 107:

> ' …
>
> iii. The alternative mode of proof by savings requires the sponsor to meet the income shortfall by savings over £16,000 x 2 ½ years. Thus MM states he has a shortfall in income of £3,000 per annum. He would need to supplement that income by savings of £16,000 plus £3,000 x 2 ½ = £23,500 to be able to sponsor his wife's admission.'

14. This supports the respondent's analysis. I have also considered the House of Commons Library updates briefing on the financial (minimum income) requirement for partner visas 20 July 2015. At 2.3:

> ' …
>
> … If cash savings are being relied on to satisfy the minimum income requirement, they must have been held by the applicant, their partner or both jointly and under their control, and for at least the six months prior to the date of application. The first £16,000 in cash savings are not taken into account. This is because £16,000 is the level at which a person generally ceases to be eligible for income-related benefits.
>
> When applying for temporary leave to remain, the amount of cash savings that can be counted towards the income requirement is calculated by dividing the amount of savings over £16,000 by 2.5 (this is equivalent to the number of years of temporary leave being applied for). When applying for Indefinite Leave to Remain (after five years), all cash savings over £16,000 can be considered.
>
> In practice, therefore, when applying for temporary leave as a partner:
>
> • £62,500 in cash savings is required if no other income sources are being used to meet the income requirement: (62,500-16,000) / 2.5 = 18,600
>
> • £17,500 in cash savings is required if the sponsor's income is £18,000, in order to make up the £600 shortfall: (17,500-16,000) / 2.5 = 600.'

15. Turning to the Immigration Rules it is clear that an applicant has a number of ways he can meet the income requirement in E-ECP.3.2. The financial requirements can be met by meeting paragraph (a) alone – i.e. by having a gross annual minimum income of £18,600. Alternatively, if the £18,600 income cannot be met, a combination of annual income and the requirements set out in (b) which are i) specified savings of £16000 **and** ii) **additional** savings equivalent to 2.5 times the shortfall (my emphasis). E-ECP.3.1 (b) (i) and (ii) are **cumulative**. Both must be satisfied if an applicant wishes to rely on income in combination with savings. The third alternative is no income but meeting both sub-paragraphs i) and ii) of (b). The use of 'additional' puts the matter beyond doubt in my view. The briefing

[1] The decision of the High Court was overturned by the Court of Appeal (MM v Secretary of State for the Home Department [2014] EWCA Civ 985) on the issue of the lawfulness of the Rules

note explains that the £16,000 savings are not taken into account because £16,000 is the level at which a person generally ceases to be eligible for income-related benefits.

16. I am satisfied that the judge made an error of law by an incorrect application of the financial requirements in the Rules. The judge (para 21) finds that *there is ample evidence of finance in this case. The sponsor earns over £17,000 and has savings of over £4000'*. Applying the correct requirements, in this case the sponsor's income was £17,468.92, resulting in a shortfall of £1,131.08. In order to qualify the appellant would require the sponsor to have £18,827.70 of savings calculated by multiplying £1,131.08 x 2.5 + £16,000. The sponsor, having savings only of £3,612.09, means the appellant cannot meet the financial requirements of the Immigration Rules.

Article 8

17. As a result of my finding on the error of law in the judge's decision on the Immigration Rules, I now need to consider the grounds of appeal on Article 8. The grounds of appeal assert that the judge erred in allowing the appeal outside of the Immigration Rules. The respondent argues that the Article 8 assessment should only be carried out when there are compelling circumstances not recognised by the Rules (relying on the case of Gulshan (Article 8 – new Rules – correct approach) [2013] UKUT 00640 (IAC)). In this case the judge did not identify any such compelling circumstances. The grounds assert that the correct test is that an appeal should only be allowed where there are exceptional circumstances - exceptional circumstances means that refusal would lead to an unjustifiably harsh outcome (Nagre [2013] EWCH HC 720).

18. Ms Solanky set out in her skeleton argument detailed arguments with regard to the correct approach to Article 8. In essence she submitted (with references to supporting authorities) that there is no exceptionality test. There is nothing in the case law that suggests a threshold test and there is no utility in imposing a further intermediary test as a preliminary to a consideration of an Article 8 claim beyond the relevant criterion based rule, rather the nature of the assessment and the reasoning which are called for are informed by threshold conditions. Ms Solanky argued that the respondent incorrectly argues for a threshold test relying on Gulshan and Nagre and that this is incorrect - she relied on the case of Sunassee, R (on the application of) v Upper Tribunal (Immigration and Asylum Chamber) & Anor [2015] EWHC 1604 (Admin) ('Sunassee') at paragraph 47. Ms Solanky submitted that the judge was correct to consider the claim under Article 8 outside of the Immigration Rules. She set out various findings and evidence that the judge had identified referring to a number of paragraphs in the decision.

19. In considering the grounds of appeal I am satisfied that the respondent was not asserting that there is a threshold test to be met nor that a test of exceptionality must be applied. The core complaint is that the judge did not identify any compelling circumstances not recognised by the Rules. In Sunassee the High Court held:

> 33. The decision of Sales J in Nagre therefore, as explained, received the endorsement of the Court of Appeal and represents the law. It has not been "overruled". It had received an endorsement already in MM (Lebanon). The law is that there is always a second stage, but **where all relevant considerations have been weighed under the Rules and there are no compelling circumstances not sufficiently recognised under the Rules it will be enough for the decision maker simply to say that**. This does not amount to a fetter on the approach of the FTT conducting the kind of appeal which existed at the time of the decision of the First-tier Tribunal in this case. In this kind of case, the issue for the First-tier Tribunal is, or was [2], always the lawfulness of the refusal to vary the claimant's leave to remain under section 6 of the 1998 Act. The duty to reach a conclusion on this issue is not circumscribed by any procedural filter, but does involve giving proper weight to the public interest as expressed by the SSHD in lawfully made rules and guidance (and now applying also sections 117A-D of the 2002 Act). The failure to qualify under the Rules will be tend to suggest that the public interest requires refusal of leave to vary, unless some countervailing factors are present which are not already taken into account under the Rules (**emphasis added).**

20. Turning to the judge's decision the judge has not specifically addressed the need to identify compelling circumstances not sufficiently recognised under the Rules in order to consider the claim under Article 8. That is not to say that mere failure to set out the correct approach is an error if the substance of the decision demonstrates that the correct approach has been adopted. In this cases the judge has identified a number of factors which clearly do not feature in the requirements under the Rules. The factors identified by the judge are; the child, issues with regard to the sponsor's mental health and ability to care for her child on her own, the concerns over the child's health in India, the fact that the sponsor no longer possesses an Indian passport and that she could only obtain a visa for a month for the child (para 24). I am satisfied that the judge did identify circumstances not sufficiently recognised under the immigration Rules. However, in considering Article 8 the judge has not set out in the decision a reasoned approach as to the basis on which she has considered the claim, insufficient reasons are given for the findings and the judge has failed to consider section 117 of the 2002 Act which is a mandatory requirement. The reasoning on the decision on Article 8 is contained within one paragraph (24). There is no evidence that the judge undertook a balancing exercise weighing the public interest in this case or why the refusal would lead to an unjustifiably harsh outcome. The judge states that, '*The purpose of Article 8 is not to prevent families from being reunited. There are in effect, no justifiable or reasonable grounds to refuse entry clearance in this case.* In terms of weighing the public interest the judge merely says *'There is no identifiable public interest in refusal in this case.'* I find that there was a material error of law - the decision is set aside. Both parties agreed that if I decided that there was a material error of law I could re-make the decision on the basis of the evidence before me.

Decision

21. The correct approach to determining a claim under Article 8 is that set out in R v SSHD ex parte Razgar [2004] UKHL 27. A Tribunal should consider 5 questions, namely:

(i) Will the proposed removal be an interference by a public authority with the exercise of the applicant's right to respect for his private or (as the case may be) family life?

(ii) If so, will such interference have consequences of such gravity as potentially to engage the operation of Article 8?

(iii) If so, is such interference in accordance with the law?

(iv) If so, is such interference necessary in a democratic society in the interests of national security, public safety or the economic wellbeing of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others?

(v) If so, is such interference proportionate to the legitimate public end sought to be achieved?"

22. In this case I do not consider it necessary to consider the first 4 questions posed as it is not disputed that a decision that keeps a husband and father apart from his wife and child is an interference with family life, that the consequences in the circumstances of this case are of such gravity to engage Article 8, that the interference is in accordance with the law and is necessary. The issue to be decided in this case is the proportionality of the interference.

23. In Entry Clearance Officer, Dhaka v Box [2002] UKIAT 02212 at para 33 the court clarified that in entry clearance cases *'…the relevant question the adjudicator should have considered was not whether the decision amounted to a disproportionate interference but whether the immigration authority… failed to comply with the "positive obligation" on him to facilitate family reunion.'* The court considered that in interference and lack of respect cases, similar principles applied. I adopt that approach.

24. There is no 'exceptionality test' but there is a requirement to carry out a balancing exercise where an individual cannot meet the requirements of the Immigration Rules. The public interest will generally only be outweighed if an applicant can show that 'compelling circumstances' exist – see [40] to [42] of SS (Congo) [2015] EWCA Civ 387.

25. The core issue is whether the interference in the appellant's, the sponsor's and the child's Article 8 rights is proportionate. There were issues that were not adequately covered by the Rules as identified by the judge - the sponsor's mental health and ability to care for her child on her own, the concerns over the child's health in India, the fact that the sponsor no longer possesses an Indian passport and that she could only obtain a visa for a month for the child.

26. I approach the proportionality exercise by considering firstly and primarily the interests of the child in this case. In ZH (Tanzania) v SSHD *[2011] UKSC 4* the Supreme Court noted that s 55 of the Borders, Citizenship and Immigration Act 2009 was enacted to incorporate the UK's obligation under article 3(1) United Nations Convention on the Rights of the Child that, *'In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law,*

administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.'

27. The court held:

> "26. This did not mean (as it would do in other contexts) that identifying their best interests would lead inexorably to a decision in conformity with those interests. Provided that the Tribunal did not treat any other consideration as inherently more significant than the best interests of the children, it could conclude that the strength of the other considerations outweighed them. The important thing, therefore, is to consider those best interests first …
>
> ...
>
> 33. We now have a much greater understanding of the importance of these issues in assessing the overall well-being of the child. In making the proportionality assessment under article 8, the best interests of the child must be a primary consideration. This means that they must be considered first. They can, of course, be outweighed by the cumulative effect of other considerations. In this case, the countervailing considerations were the need to maintain firm and fair immigration control, coupled with the mother's appalling immigration history and the precariousness of her position when family life was created. But, as the Tribunal rightly pointed out, the children were not to be blamed for that."

28. In JO and Others (section 55 duty) Nigeria [2014] UKUT 00517 (IAC) the Upper Tribunal reviewed the relevant principles and correct approach. The Tribunal set out at paragraph 9:

> "More detailed prescription of the correct approach to section 55 and its interaction with Article 8 ECHR has followed. In Zoumbas v Secretary of State for the Home Department [2013] 1 WLR 3690, the Supreme Court recently considered the interplay between the best interests of the child and Article 8 ECHR, rehearsing what might be termed a code devised by Lord Hodge comprising seven principles:
>
> (1) The best interests of a child are an integral part of the proportionality assessment under Article 8 ECHR;
>
> (2) In making that assessment, the best interests of a child must be a primary consideration, although not always the only primary consideration; and the child's best interests do not of themselves have the status of the paramount consideration;
>
> (3) Although the best interests of a child can be outweighed by the cumulative effect of other considerations, no other consideration can be treated as inherently more significant;
>
> (4) While different judges might approach the question of the best interests of a child in different ways, it is important to ask oneself the right questions in an orderly manner in order to avoid the risk that the best interests of a child might be undervalued when other important considerations were in play;
>
> (5) It is important to have a clear idea of a child's circumstances and of what is in a child's best interests before one asks oneself whether those interests are outweighed by the force of other considerations;

> (6) To that end there is no substitute for a careful examination of all relevant factors when the interests of a child are involved in an Article 8 assessment; and
>
> (7) A child must not be blamed for matters for which he or she is not responsible, such as the conduct of a parent."

29. I have considered the factors identified in ZH (Tanzania) and JO and Others set out above. The judge identified that the best interests of the child are served by having both parents involved in her life. On the facts of this case that cannot be disputed particularly as the sponsor is having difficulty in coping with caring for the child and is suffering from depression. The sponsor's evidence in connection with the child's health was *'my baby was seriously ill with coughing due to polluted environment (in India), my baby's life may be permanently threatened to non-adjustable environment for her in India'*. There was no medical evidence that the child's health had suffered during the visit to India, for example, evidence of visit to a doctor or a hospital in India and whether the causative effect was the polluted environment. There was no medical evidence that the child's health would be impaired if moved to India, or of any particular underlying condition that the child has that would give rise to the child being unable to adjust to living conditions in India. In the absence of medical evidence I place little weight on this. This is a very young child (now aged 15 months). No private life can be said to have built up in the United Kingdom. Being cared for by both parents can be facilitated if the sponsor chose to move to India to live with her husband (although there were difficulties in obtaining a visa for more than a month for the child it has not been suggested that this could not be resolved if the sponsor were to live in India permanently). This would also resolve the sponsor's problems coping alone with the care of the child. I find that the best interests of the child is to be cared for by both parents but that this does not require that the child lives in the UK.

30. The sponsor has mental health problems. She says that she is suffering from depression and has suicidal tendencies. No medical evidence was put before the First-tier Tribunal but in a bundle submitted to the Upper Tribunal it is clear that the sponsor has now visited her doctor (on 4 June 2015) who indicates that the appellant is suffering from mild anxiety and depression (suicidal tendencies was not recorded) and that medication has been prescribed. This was recorded by the GP as a 'new episode'. In an accompanying letter to the Upper Tribunal it is explained that the sponsor did not go to the GP before as she was concerned that her child might be removed. I accept that the sponsor may have been reluctant to visit her GP and that the depression may have been in existence before the visit to the GP. If the sponsor were to re-locate to India presumably this would also facilitate an improvement in her mental health problems (we are told that the depression has largely been contributed to by being separated from her husband). Even if medical intervention were required to be continued in India, it has not been suggested that there are not adequate facilities to treat the medical condition in India. The sponsor speaks Punjabi, Hindi and Urdu. The sponsor speaks Punjabi when communicating with the appellant. I do not foresee any language difficulties or any particular difficulties with the sponsor integrating into the

culture in India. The sponsor has family in India – her parents live there and she would be joining her husband. The appellant in interview when asked what he would do if his application failed answered that *'she will come and live with me here in India, I can look after her'.*

31. Having considered all the factors I do not accept that the difficulties identified are such that they amount to more than matters of mere hardship or mere difficulty for the sponsor and her daughter to re-locate to India if they chose to do so to live with the appellant. I have considered the submissions made by Ms Solanky that it would not be reasonable to expect the child, who is a British citizen, to relocate to India. I accept that the child's nationality is of particular importance and must be given proper recognition because British children *'have rights which they will not be able to exercise if they move to another country. They will lose the advantages of growing up and being educated in their own country, their own culture and their own language'*, ZH (Tanzania) para 32. In this case no-one is **requiring** the child or the sponsor to re-locate. In Sanade and others (British children - Zambrano – Dereci) [2012] UKUT 00048 (IAC) in the headnote the position was summarised as:

> "6. Where in the context of Article 8 one parent ("the remaining parent") of a British citizen child is also a British citizen (or cannot be removed as a family member or in their own right), the removal of the other parent does not mean that either the child or the remaining parent will be required to leave, thereby infringing the Zambrano principle, see C-256/11 Murat Dereci. The critical question is whether the child is dependent on the parent being removed for the exercise of his Union right of residence and whether removal of that parent will deprive the child of the effective exercise of residence in the United Kingdom or elsewhere in the Union."

32. By analogy the appellant is being refused entry but refusal of entry will not deprive the child in this case of effective residence in the United Kingdom unless the sponsor chooses to re-locate to India.

33. I have considered section 117 of the 2002 Act. Although the public interest is statutorily enshrined in s117B these factors are not the only factors to be considered but they form a bedrock for consideration. Sufficient weight must be accorded to the public interest in the maintenance of effective immigration controls. Further, sufficient weight must be accorded to the interests of the economic well-being of the United Kingdom, in that persons who seek to enter or remain in the United Kingdom must be financially independent. The appellant was unable to meet the financial requirements of the Immigration Rules.

34. The sponsor and the appellant entered into their relationship and marriage at a time when they knew that the sponsor had no entitlement to enter and remain in the UK. In R (on the application of Mahmood) v Secretary of State for the Home Department [2001] INLR the court held "*The state has a right under international law to control the entry of non-nationals into its territory subject always to its treaty obligations. Article 8 does not impose on the state any general obligation to respect the choice of residence of a married couple*".

35. The couple conceived their child in those circumstances. It cannot be held against the child, in assessing her interests, as she had no knowledge of her father's immigration status. In MH (Pakistan) [2011] CSOH 143 it was held that the respondent's entitlement to take into account the precariousness of the position when a relationship was entered into and the need to maintain immigration control were confirmed in ZH (Tanzania).

36. Having weighed all the factors set out above the cumulative effect of the factors in favour of refusal of entry, the precariousness of the appellant's position with regard to entry clearance, the public interest in maintenance of effective immigration control and the public interest in ensuring that persons who seek to enter or remain in the United Kingdom are financially independent, outweigh the interests of the child, sponsor and appellant. I find that the interference with their Article 8 rights is proportionate to the legitimate aim of preserving the economic well-being of the country. The refusal to grant the appellant entry clearance as a partner is proportionate.

37. I note (although this does not form part of my decision and was not taken into account in reaching my decision) that it is open to the appellant to make a further application if the sponsor now meets the financial requirements.

Conclusions

38. There was a material error of law such that the decision of the First-tier Tribunal is set aside.

39. I decided to re-make the decision. I dismiss the appellant's appeal against the Entry Clearance Officer's decision to refuse to grant entry clearance as a partner under the Immigration Rules and to refuse the claim under article 8.

40. I have considered whether any parties require the protection of an anonymity direction. No anonymity direction was made previously. Having considered all the circumstances and evidence we do not consider it necessary to make an anonymity direction.

Notice of Decision

The appeal is allowed. The decision of the First-tier Tribunal is set aside.

I re-make the decision.

The appellant's appeal against the Entry Clearance Officer's decision to refuse the appellant's application for leave to enter under the Immigration Rules and claim under Article 8 is dismissed.

Signed P M Ramshaw Date 17 August 2015

Deputy Upper Tribunal Judge Ramshaw