Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: OA/10618/2014

THE IMMIGRATION ACTS

Heard at Glasgow	**Decision and Reasons Promulgated**
On 15 September 2015	**On 17 September 2015**

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

ENTRY CLEARANCE OFFICER, Istanbul

Appellant

and

MUSTAFA ADUGUZEL

Respondent

Representation:
For the Appellant: Mr A Mullen, Senior Home Office Presenting Officer
For the Respondent: no legal representative; sponsor present

DETERMINATION AND REASONS

1. The parties are as described above, but the rest of this determination refers to them as they were in the First-tier Tribunal.

2. The appellant is a citizen of Turkey, born on 8 May 1985. On 14 September 2013 he married Hayley Whyte, a citizen of the UK, born on 13 December 1982. He has been in the UK three times in accordance with visas obtained, and has an impeccable immigration history. On 4 February 2014 he applied for entry clearance as a partner, based on the marriage. On 20 February 2014 the ECO advised him that his application fell to be refused

because the income requirement was not met, but that a decision had been put on hold dues to a legal challenge to that requirement. That challenge was resolved by the Court of Appeal on 11 July 2014. By decision dated 14 November 2014 the ECO refused the application.

3. The appellant appealed to the First-tier Tribunal. The case came before Judge Thanki for decision "on the papers". The income shortfall (a quite small amount) was the only issue. In his determination, promulgated on 29 April 2015, the judge held that it was shown that Mrs Adiguzel had self-employed income as well as a salaried post, and further evidence was produced to bring the figure over the limit, so he allowed the appeal.

4. The ECO sought permission to appeal to the UT, on the grounds that the judge erred by taking account of the sponsor's income in the financial year 2013/14, when the Rules required income to have been established for the year 2012/13. On 14 July 2015, permission was granted.

5. The point taken by the respondent in the grounds is well founded in terms of the Rules. Applications must be supported by required evidence relating to the last full financial year prior to the date of application.

6. The sponsor pointed out that by the time this application was decided, the last financial year was 2013/14 not 2012/13. She referred to passages in the respondent's guidance on Appendix FM, e.g. at paragraph 9.1.1, to the effect that income can be used "from the last full financial year to meet the financial requirement"; at 9.3.3, evidence submitted must cover the relevant financial year "most recently ended"; and so on. However, as Mr Mullen pointed out the guidance read in full makes it clear that it relates to evidence and to the last full financial year "*at the date of application*" – see again 9.1.1, and elsewhere.

7. There might have been some scope for a finding in favour of the appellant if the wording of the guidance gave a latitude not to be found in the Rules; but the guidance does not extend any further.

8. My sympathies are entirely with the appellant and with the sponsor. They have plainly considered their position carefully and taken care to try to comply with the requirements of the Rules. It was not through any fault of theirs that the decision was put on hold pending the legal challenge answered by the Court of Appeal on 11 July 2014 in *MM and Others*. The decision did not issue very quickly thereafter (probably due to a backlog of similar cases). Their hopes were further raised and delay brought about due to the decision in their favour by the First-tier Tribunal, which the respondent has shown to be legally flawed. The system for entry of spouses governed by the Rules and related guidance is complex and confusing, often even for expert practitioners. The appellant and sponsor have done their best to navigate it, and I can see how they unfortunately gained the impression that they were entitled to improve their case as it went along. Unfortunately, however, I can see no possible legal resolution in their favour.

9. The only consolation to be offered is that the appellant has the recourse of a fresh application to the Entry Clearance Officer. Of course, the appellants should not take this determination as a guarantee of a successful outcome, because any application must be decided on its own on its own merits, but if circumstances are as they now appear, it is to be hoped that such an application can be made and granted without any further undue delay.

10. The determination of the First-tier Tribunal is **set aside**.

11. The case raises no issue going outside the Rules.

12. The following decision is substituted: the appeal, as originally brought to the First-tier Tribunal, is **dismissed**.

13. No anonymity direction has been requested or made.

Upper Tribunal Judge Macleman

15 September 2015