



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

Appeal Number: OA/18942/2013

**THE IMMIGRATION ACTS**

**Heard at Birmingham  
On 27 April 2015**

**Determination Promulgated  
On 29 April 2015**

**Before**

**UPPER TRIBUNAL JUDGE PITT**

**Between**

**MOLLIKA NAHIDA BEGUM**

Appellants

**and**

**ENTRY CLEARANCE OFFICER - DHAKA**

Respondent

**Representation:**

For the Appellant: Mr Miah of Shazu Miah Solicitors

For the Respondents: Mr Mills, Senior Home Office Presenting Officer

**DETERMINATION AND REASONS**

The Appeal

1. This is an appeal against the determination promulgated on 2 October 2014 of First-tier Tribunal Judge Tully which refused the appeal against the respondent's decision dated 3 August 2014 to refuse entry clearance as a spouse.
2. It was common ground before me that this appeal turns around a single document, that being an original bank statement for July 2013 for the sponsor.

3. The initial ECO refusal dated 1 October 2013 stated in terms that this bank statement was required for the purposes of Appendix FM-SE but had not been provided. The decision of 1 October 2013 was provisional as the respondent was waiting for the outcome of the Court of Appeal case of MM v SSHD [2014] EWCA Civ 985 on the minimum income requirements for spouses set by the Immigration Rules. In the final refusal notice dated 3 August 2014 the respondent again indicated that the omission of a bank statement for July 2013 was a material reason for refusal. The ECO review dated 3 August 2013 stated the same thing.
4. It was therefore the position at the date of the application and the decision and the ECO review that no July 2013 bank statement, whether copy or original, was before the ECO at the relevant time.
5. It is also common ground that by the time of the hearing before Judge Tully, the sponsor had provided a copy of the July 2013 bank statement but not an original as required by Appendix FM-SE. As Judge Tully indicated at [22], it was conceded for the appellant that “the original documents in the form of payslips or bank statements for the relevant period” were not before her. She found, correctly, in my view, that the requirements of Appendix FM-SE could not be met where the original bank statement had not been provided to the ECO.
6. Nothing in the determination shows that it was argued before the First-tier Tribunal that the sponsor had, in fact, sent an original or a copy of the July 2013 bank statement to the respondent.
7. Before me, Mr Miah submitted that an original July 2013 bank statement was sent to the ECO but somehow did not arrive. That submission cannot have any merit where it was not put to the First-tier Tribunal. I found it a surprising submission where, as above, it had never been suggested prior to the hearing before me that even a copy of the July 2013 bank statement was provided to the ECO, let alone an original.
8. Mr Miah also submitted that the provisions of Appendix FM-SE allowed for the respondent to request a further document if a copy was provided rather than an original. That cannot assist the appellant for two reasons.
9. Firstly, as above, the ECO was not provided with any version of the July 2013 bank statement. There was no copy that could be remedied by the provision of an original. There was no incorrect format that could be remedied by an original. It was not a document missing from a sequence. The “evidential flexibility” provisions simply do not apply in these circumstances.
10. Secondly, also as above, the provisional decision dated 1 October 2013 put the sponsor on notice of the omission of the original July 2013 bank statement. The notice indicated that further evidence was provided it would be taken into account if submitted by the time of the final decision.

In effect, the respondent did provide an opportunity for the missing document to be provided but it was not, not even a copy.

11. Mr Miah's submission that the First-tier Tribunal should have considered the documents before her in the round against the balance of probabilities cannot get off the ground in the light of the detailed provisions approved by Parliament in Appendix FM-SE.
12. For all of these reasons, I find no material error in the determination of First-tier Tribunal.

Decision

16. The decision of the First-tier Tribunal does not disclose an error on a point of law such that it should be set aside and therefore and shall stand.

Signed:   
Upper Tribunal Judge Pitt

Date: 27 April 2015