

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

Appeal Number:
OA/21698/2013



THE IMMIGRATION ACTS

Heard at Field House

On 28 May 2015

**Determination
Promulgated
On 9 June 2013**

Before

DEPUTY UPPER TRIBUNAL JUDGE DRABU CBE

Between

ENTRY CLEARANCE OFFICER - CHENNAI

Appellant

and

Mrs KAMALAMUTHTHU SANTHAKUMARI RAMAMOORTHY

(ANONYMITY DIRECTION NOT MADE)

Respondent

Representation:

For the Appellant: Mr Esen Tufan, Senior Presenting Officer

For the Respondent: Mr R Layne of counsel instructed by Genga & Co,
solicitors.

DECISION AND REASONS

1. The appellant in this appeal before me is the Entry Clearance Officer, Chennai who appeals against the decision of Judge Canavan, a Judge of the First Tier Tribunal. Judge Canavan had for reasons given in her determination promulgated on 10 September 2014, allowed the appeal of the respondent in the appeal before me. She concluded her determination by stating that the decision to refuse the respondent entry clearance as the partner of a British citizen was in accordance with the immigration rules but it was unlawful under Section 6 of the Human Rights Act 1998 as being incompatible with the appellant's rights under Article 8 of the European Convention. The Entry Clearance Officer sought and was

granted permission to appeal to the Upper Tribunal by Judge Shimmin, a Judge of First-Tier Tribunal on 2 February 2015.

2. At the hearing before me the representatives agreed that Judge Canavan was wrong in finding that the sponsor in this case “did as a matter of fact meet the minimum threshold for the financial requirements” Mr Tufan argued that the evidence before her did not warrant such a finding. He also submitted the Entry Clearance Officer had not been provided relevant documentary evidence on financial ability of the sponsor as specified under Appendix FM – SE. Mr Layne did not dissent from these arguments made by Mr Tufan.
3. Mr Tufan went on to argue that it was the mistake that the Judge had made in respect of her finding of fact that the sponsor had met the financial income threshold that may have caused her to allow the appeal on Article 8 grounds. He said she should not have done that anyway without finding a compelling reason as to why and how Article 8 of the ECHR was breached as a result of the impugned decision. He relied on paragraph 51 of Lord Justice Richards’s judgement in the Court of Appeal decision in **SS (Congo) [2015] EWCA Civ 387**. Mr Tufan also drew my attention to the judgment of the Court of Appeal in **Agyarko and Others [2015] EWCA Civ 440** and relied on paragraphs 21 and 25 thereof.
4. Having read the determination of Judge Canavan most carefully, I find that the appellant’s grounds upon which permission to appeal to the Upper Tribunal had been granted are made out. The decision is in material error of law and is therefore set aside.
5. In remaking the decision I find that the respondent (applicant) had not met the Rules at the time of making the application or even at the time of the decision of refusal. Further, I find that no evidence of any compelling circumstances to justify allowing the appeal outside the Rules (Article 8 of ECHR) was adduced. I am most grateful to both representatives for their succinct and cogent submissions. In the circumstances the appeal of the Entry Clearance Officer is allowed.

K Drabu CBE
Deputy Judge of the Upper Tribunal
5 June 2015

Date:

Anonymity Direction

On the facts of this case anonymity direction is neither necessary nor appropriate.

Fee Award

The direction made by Judge Canavan is maintained. There is no award of costs as the substantive appeal has been dismissed.

K Drabu CBE
Deputy Judge of the Upper Tribunal