



IAC-AH-CJ-V1

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

Appeal Number: OA/01441/2014

**THE IMMIGRATION ACTS**

**Heard at Centre City Tower, Birmingham  
On 15<sup>th</sup> January 2016**

**Decision & Reasons Promulgated  
On 18<sup>th</sup> February 2016**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE JUSS**

**Between**

**MRS SADIA MEHMOOD  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: No appearance  
For the Respondent: Mr David Mills (HOPO)

**DETERMINATION AND REASONS**

1. This was an appeal against the determination of First-tier Tribunal Judge Malik promulgated on 18<sup>th</sup> November 2014, in what was a “paper case” before the judge. In the determination, the judge dismissed the appeal of Mrs Sadia Mehmood, who subsequently applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

### **The Appellant**

2. The Appellant is a female citizen of Pakistan who was born on 27<sup>th</sup> July 1990. She appealed against the Respondent's decision to refuse her application for entry clearance as a spouse. The basis of the Respondent's refusal was that the application made on 17<sup>th</sup> December 2013 under paragraph EC-P.1.1(d) of Appendix FM of the Immigration Rules did not comply with the requirements therein set out. The date of the decision of the Respondent's refusal letter is 8<sup>th</sup> September 2014.

### **The Judge's Findings**

3. The judge accepted that the appeal bundle before him included photographs of the Appellant and the Sponsor's wedding and a copy of the translated marriage certificate in Pakistan of the Appellant with her British citizen husband. There were also a number of records indicating "internet chat" (see paragraph 9). There was also a copy of an e-ticket in the name of the Sponsor indicating that he had travelled to Pakistan in February 2014 returning in March 2014 (see paragraph 10). The judge was satisfied that the Appellant met the required standard in that they had met, had married, and were in a genuine marriage, and there was the intention to live permanently together in the UK as man and wife (see paragraph 18). However, the judge was not satisfied that the Appellant met the requirements of the Rules regarding the income threshold requirements because the specified documents, required under Appendix FM-SE, had not been satisfied for the required periods under consideration. The judge gave his reasons for so holding at paragraphs 14, 16, and 17 of the determination.

### **Grounds of Application**

4. The grounds of application contend that the judge did not take into account all the documentation that was submitted. For example, the judge states at paragraph 15 of the decision that there is no evidence of his statement of account, yet this is at page 358 of the Appellant's bundle. Accordingly, he had overlooked material evidence in this matter before him.
5. On 15<sup>th</sup> January 2015, permission to appeal was granted.
6. On 28<sup>th</sup> January 2015, a Rule 24 response was entered to the effect that the Appellant did not provide with the application the specified evidence for the required period, and that whilst some of the evidence was provided later, it was not at the time of the application, and at paragraph 17 the judge had so stated. There was no material error of law.

### **The Hearing**

7. At the hearing before me on 15<sup>th</sup> January 2016, the Appellant was not represented. Nor was there any explanation for the non-representation. More significantly still, the Sponsor was not in attendance and nor was there any explanation for the Sponsor's not being at the hearing to support his wife's application.

8. Mr David Mills, appearing as Senior Home Office Presenting Officer, submitted that the judge had dismissed the appeal because the evidence to satisfy FM-SE was not before him in the manner required. This was a “paper case”. Mr Mills submitted that he would have to concede that in a “paper case” it is often the case that a party to the proceedings simply sends their bundle of documentation to the Tribunal, and does not copy in the Home Office, so that in this case if the evidence referred to had been sent to the Tribunal, it had certainly not been sent to the Home Office Presenting Officers’ Unit.
9. The judge had said (at paragraph 17) that there was evidence before him:

“To indicate the Sponsor is self-employed and also employed as claimed; whilst accepting his business was not ‘mature’ at the time of his application, on the evidence before me, it appears he did not have all the required documentation at the time of application for the relevant period.”

It is for the Appellant to show that this evidence was indeed before the judge. This was not a points-based application. This means that it remains open to the Appellant to submit evidence right up to the date of this hearing which goes to the relevant matter under the Immigration Rules. He asked me to dismiss the appeal.

### **Error of Law**

10. I am satisfied that the making of the decision by the judge involved the making of an error on a point of law (see Section 12(1) of TCEA 2007) such that I should set aside the decision. My reasons are as follows. First, it is plain that the judge overlooked some of the evidence, and this is clear from the way that permission has been granted with express reference to the fact that at paragraph 15 of the determination it is said that there is no evidence of the statement of account and yet at page 358 of the Appellant’s bundle this is set out.
11. Second, the judge has erred in law in stating that, “whilst some of the required documentation is available now, it was not available at the time of the application. As such the Appellant does not meet the requirements of the Rules ...” (see paragraph 17). This does not follow at all because it is not a points-based application and it is open to the judge to consider evidence that is germane to the application even if it had not been submitted at the time of the application. The failure to consider this documentation simply on the basis that it was not included at the time of the application is an error of law.

### **Remaking the Decision**

12. I have remade the decision on the basis of the findings of the original judge, the evidence before him, and the submissions that I have heard today from Mr Mills. I am allowing this appeal for the following reasons. The judge found at paragraph 14 of the determination that the Appellant had not submitted a personal bank statement for the same twelve month period as the tax return showing the Sponsor’s income from his self-employment, paid into his account, and because of this the Appellant had not met the requirements of the Rules. However, the Sponsor is self-employed.

He is also employed. His personal bank statement from 1<sup>st</sup> March 2013 to 2<sup>nd</sup> September 2013 confirms the salary coming into his account. This shows the income that he receives coming into his account for the six month period because he has been employed with the same employer for the last six months, and this meets the requirements of the Immigration Rules.

13. As far as the business bank statement is concerned the Appellant's Sponsor submitted a bank statement which covered the six month period prior to the date of the application. The Respondent's own bundle has included at the end of it a statement from the Heartlands Financial Services Ltd, dated 31<sup>st</sup> July 2013 and this is a letter from the Sponsor's accountant. It states that the tax return submitted online to the HMRC for the year ending 5<sup>th</sup> April 2013 confirmed a net profit, after expenses from the business where the Appellant was self-employed, of £8,443.
14. However, in addition to this, the Sponsor had been working in a grocery for the same employer and he had an annual gross salary, which is confirmed in his P60, of £11,475.37. Therefore, his combined earnings from employment and self-employment for the year ending 5<sup>th</sup> April 2013 is £19,918.37. On a balance of probabilities, therefore, the Appellant has met the requirements of the Rules and this appeal is allowed.

**Notice of Decision**

15. The decision of the First-tier Tribunal involved the making of an error of law such that it falls to be set aside. I set aside the decision of the original judge. I remake the decision as follows. This appeal is allowed.
16. No anonymity order is made.

Signed

Date

Deputy Upper Tribunal Judge Juss

12<sup>th</sup> February 2015