



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

Appeal Number: OA/02852/2015

THE IMMIGRATION ACTS

**Heard at Bradford
On 2 February 2016**

**Decision & Reasons
Promulgated
On 1 June 2016**

Before

UPPER TRIBUNAL JUDGE CLIVE LANE

Between

**MOBBEEN KOUSAR
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

ENTRY CLEARANCE OFFICER - ISLAMABAD

Respondent

Representation:

For the Appellant: Mr A Hussain, instructed by Trent Centre for Human Rights
For the Respondent: Mr Diwnycz, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant, Mobbeen Kousar, was born on 8 August 1993 and is a female citizen of Pakistan. She applied to enter the United Kingdom for settlement as the spouse of Bilal Mahmood (hereafter referred to as the

sponsor). The application was refused by the Entry Clearance Officer (the ECO) by a decision dated 31 December 2014. She appealed to the First-tier Tribunal (Judge North) which, in a decision promulgated on 17 August 2015 dismissed the appeal. She now appeals, with permission, to the Upper Tribunal.

2. The judge noted there were two issues before him in the appeal. The first concerned the genuineness and subsistence of the relationship between the appellant and sponsor [6]. The judge found that the relationship was subsisting and that the appellant intended to live permanently with the sponsor. The second issue concerned the financial requirements of Appendix FM-SE. The parties agreed that the application of the ECO was defective in that the appellant failed to supply the sponsor's bank statement and wage slips for August 2014, being a date within the period of time for which the appellant was required to supply complete documentary evidence in order to satisfy Appendix FM-SE (A1.1(I)). In granting permission to appeal, Judge Hodgkinson stated [3] that "the documents before me indicate that it is probable that the missing specified documents were lodged with the appellant's grounds of appeal even though the Entry Clearance Manager in the review statement appears to indicate otherwise." The Entry Clearance Manager's review recorded that,

"... having reviewed the decision in the light of the grounds of appeal, I note that no new evidence has been submitted in support of the appeal or to address the issues raised about the financial requirements. The documents submitted now are those which were provided and available at the time of the decision. As no further evidence has been submitted, I am not prepared to concede on this point ... The appellant states that additional documents will be submitted at a later stage."

The ECM goes on to make the point that, should the appellant adduce the additional evidence before the First-tier Tribunal Judge, the ECO/ECM would have been given no opportunity of considering the documents before a decision was made on the appeal.

3. The missing documents were put before me in the Upper Tribunal hearing. With respect, I believe that Judge Hodgkinson is wrong when he states that it is probable the documents were also submitted with the application (and, by implication, lost by the ECO). I say that because at [8] of Judge North's decision, he records that, "the appellant submitted that it was an oversight that the sponsor's wage slips for August had not been included with the application." That seems to me to be a fairly clear record of an admission on the part of the appellant that the required documents were not submitted with the application. Further, I note that Appendix FM-SE (paragraph D) provides that the ECO "will only consider documents submitted after the application where a sequence of documents or some of the documents in the sequence have been omitted where the decision maker is satisfied that valid reasons have been given why a specified document could not be supplied."

4. The rule anticipates the submission of additional evidence after an application has been filed with the ECO; it does not, in my opinion, cover the present circumstance where the appellant has not supplied the document with the application and has then, in effect, refused to send it to the ECO but rather has kept it back for use in appeal proceedings. The appellant has not, therefore, submitted the document at all to the ECO so I do not see that Appendix FM-SE paragraph D applies. Furthermore, subparagraph (f) provides that a decision maker *may* contact the applicant or their representative in writing or otherwise request further information or documents. It was not necessary, in my opinion, for the ECO or ECM to exercise a discretion in favour of the appellant where the missing documents were, in effect, being withheld.
5. These considerations in mind, I find that it was open to Judge North to conclude at [8] that the appellant's appeal should be dismissed on account of failure to comply with Appendix FM-SE.

Notice of Decision

This appeal is dismissed.

No anonymity direction is made.

Signed

Date 30 March 2016

Upper Tribunal Judge Clive Lane

TO THE RESPONDENT
FEE AWARD

I have dismissed the appeal and therefore there can be no fee award.

Signed

Date 30 March 2016

Upper Tribunal Judge Clive Lane