



IAC-FH-AR-V2

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

Appeal Number: OA/09017/2014

**THE IMMIGRATION ACTS**

**Heard at Newport  
On 27 June 2016  
Prepared 27 June 2016**

**Decision & Reasons Promulgated  
On 28 July 2016**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE DAVEY**

**Between**

**MR TAMER ABDULAZIZ KAID HAMED  
(ANONYMITY DIRECTION NOT MADE)**

**Appellant**

**and**

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

**Respondent**

**Representation:**

For the Appellant: Miss R Harrington, Counsel, instructed by Qualified Legal Solicitors

For the Respondent: Mr M Diwnycz, Senior Presenting Officer

**DECISION AND REASONS**

1. The Appellant, a national of Yemen, appealed against the Respondent's decision, dated 30 April 2014, to refuse entry clearance with reference to paragraphs E-

ECP.1.1, E-ECP.2.6 and 2.10 and with reference to Appendix FM-SE of the Immigration Rules HC 395 as amended.

2. Two principal issues arose in the appeal before First-tier Tribunal Judge O'Brien whose decision [D], dated 18 August 2015, led to the appeal being dismissed under the Immigration Rules and on human rights grounds. Permission to appeal was given by Upper Tribunal Judge Martin sitting as a Judge of the First-tier Tribunal on 25 January 2016. The Respondent served a Rule 24 response, dated 1 February 2016, essentially arguing no error by the judge.
3. The judge did resolve the issue of whether there was a genuine and subsisting relationship and concluded at D30 that the Appellant and Miss Ali were in a genuine and subsisting relationship. The judge on the information before him concluded that the financial requirements had not been met because the amount of income as calculated was under the required figure of £18,600 gross in the twelve month period prior to the application.
4. Miss Harrington today spotted the fact that there was an apparent error by the Respondent in the selection of the wrong date of application: Although it had been taken to be 2 March in fact the application was made, the fee having been paid, on 20 March 2014: from the documents before the judge and before me, it is possible in fact to calculate as she did, in helpful tabular form, the correct figure for the gross earnings in the relevant twelve month period which as I have indicated, the judge was unaware of. It is extremely unfortunate because had the right application date been taken it demonstrated that the earnings met the threshold and amounted to some £19,248 odd gross in the required period and thus he met the £18,600 figure required in the same twelve months period.
5. Thus it is clear that paragraph 13A and 18E applied under Appendix FM and therefore there was no failure on the maintenance ground.

6. In those circumstances it is accepted on behalf of the Secretary of State that there was an error of fact amounting to an error of law, even though the judge was not aware of it and that in the circumstances it is open to me to find that the Original Tribunal's decision cannot stand: I do so.
7. It was also a matter of submissions, but agreed by the parties, that it is open to me on this limited issue relating to maintenance alone to remake the decision. For the reasons given above I am satisfied that the Appellant has discharged the burden of proof on the balance of probabilities of showing that at the relevant date, being the date of application, as well as obviously the date of hearing, the Appellant met the required maintenance requirements under the Rules.
8. The following decision is substituted. The appeal is allowed.

**Anonymity Order**

9. No anonymity order having been made nothing indicates that it is necessary or appropriate for one to be imposed.

**Fee Award**

10. No fee having been paid I do not find it appropriate to make a fee award against the Secretary of State.

Signed

Date 28 July 2016

Deputy Upper Tribunal Judge Davey