



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

Appeal Number: OA/09633/2015

THE IMMIGRATION ACTS

Heard at Field House

On 7 July 2016

**Decision &
Promulgated
On 12 July 2016**

Reasons

Before

DEPUTY UPPER TRIBUNAL JUDGE HILL QC

Between

**HOSSAM AHMED HAMDAN ODAT
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mrs A S Odat, Sponsor

For the Respondent: Mr P Duffy, Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal brought by the Secretary of State for the Home Department from a decision of First-tier Tribunal Judge Shamash promulgated on 25 April 2016. Mr Odat, whose appeal was determined on

the papers, is self-evidently not present but his wife, who is the sponsor, has made representations on his behalf.

2. The Entry Clearance Officer in Jordan refused entry clearance because the income of Mrs Odat did not reach the minimum threshold prescribed by the Immigration Rules.
3. It is perhaps regrettable with hindsight that the matter was determined on the papers, because the Judge would have been aware of the burning sense of grievance which Mrs Odat has concerning the fact that two applications have been differently determined by Entry Clearance Officers which, she says, reveals a mutually incompatible approach in relation to gross and net income. She states that when she collated the figures for the second application she did so meticulously following the template of the earlier refusal and she struggles to understand why a different Entry Clearance Officer took a different approach on the second occasion.
4. The Secretary of State's appeal concerns the flawed approach of the Judge in purporting to include the notional benefit of free accommodation as a supplement to the sponsor's income as a means of massaging the figures so as to get them above the minimum threshold. The Judge seems to acknowledge (paragraph 30) that this was an unusual course (a "mute point" [*sic*]), but the conclusion (paragraph 29) was not open to the Judge under Appendix FM-SE, paragraph 18(8)(c) of which prescribes that accommodation allowances should be left out of account in calculating income.
5. Further, allowing the appeal in the alternative under Article 8 outside the Rules is also flawed because the Judge does not identify any exceptional circumstance as to why the claim having failed under the Rules, it should be considered under Article 8.
6. Both these matters amount to material errors of law and I have no option but to set aside the determination.
7. The Secretary of State does not seek to keep the case in the Upper Tribunal for the decision to be remade and I think that is right. The issues raised before me are primary fact-finding matters which must be determined afresh by a different First-tier Tribunal at the first opportunity. I recognise the sense of frustration which Mrs Odat feels with seemingly inconsistent responses from different Entry Clearance Officers. In the circumstances I ask that this matter be listed in the First-tier Tribunal at the very earliest opportunity with a time estimate of an hour and a half.

Notice of Decision

- 1. Determination of First-tier Tribunal set aside.**
- 2. Appeal to be remitted to First-tier Tribunal for redetermination by a Judge other than Judge Shamash.**

3. Rehearing to be expedited and listed on first available date with a time estimate of 1.5 hours.

No anonymity direction is made.

Signed *Mark Hill*

Date

12 July 2016

Deputy Upper Tribunal Judge Hill QC