



**Upper Tribunal
(Immigration and Asylum Chamber)
OA/10577/2014**

Appeal Number:

THE IMMIGRATION ACTS

**Heard at Field House
On 18 February 2016**

**Decision & Reasons
Promulgated
On 4 March 2016**

Before

UPPER TRIBUNAL JUDGE CLIVE LANE

Between

ENTRY CLEARANCE OFFICER - NEW DELHI

Appellant

and

**MINA BEGUM RUMI
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: Ms Brocklesby-Weller, Senior Home Office Presenting Officer

For the Respondent: Mr Ahmed instructed by Ethnic Community Service UK Limited

DECISION AND REASONS

1. I shall refer to the appellant as the respondent and to the respondent as the appellant (as they appeared respectively before the First-tier Tribunal). The appellant was born on 1 October 1989 and is a female citizen Bangladesh. By decision dated 31 July 2014 the respondent refused the appellant's application for entry clearance to the United Kingdom as the

partner of Mr Ali Azmal (hereafter referred to as the sponsor). The appellant appealed to the First-tier Tribunal (Judge Bartlett) which, in a decision promulgated on 8 September 2015 allowed the appeal under the Immigration Rules. The Entry Clearance Officer now appeals, with permission, to the Upper Tribunal.

2. The outcome of the appeal turns on a single issue. Inter alia, the appellant was required to meet the requirements of Appendix FM-SE1(n):

(n) The gross amount of any cash income may be counted where the person's specified bank statements show the net amount which relates to the gross amount shown on their payslips (or in the relevant specified evidence provided in addition to the specified bank statements in relation to non-employment income). Otherwise, only the net amount shown on the specified bank statements may be counted.

The sponsor was paid by his employer in cash. The sponsor, in turn, paid cash sums into his bank account but retained some cash for his own use. As a consequence, the sum shown in the sponsor's bank statements were less than the sums appearing in the wage slips and were also insufficient to meet the minimum income requirements imposed by Appendix FM. The judge acknowledged this deficiency [35] but concluded that, because the respondent had carried a check with HMRC this check confirmed full amounts of net salary paid to the sponsor, the appeal should be allowed under the Immigration Rules notwithstanding that the failure of the appellant and sponsor to meet the requirements of Appendix FM-SE1(n) (i.e. "only the net amount shown in the specified bank statements may be counted" as evidence of the required level of income).

3. Mr Ahmed, for the appellant, urged the adoption of a purposive construction of the Rules given that it was clear that the appellant had produced documentary evidence confirming the required level of income.
4. I disagree with Mr Ahmed. The requirements of Appendix FM-SE do not provide some general gloss or guideline to indicate how the substantive Rules might be met. They are strict requirements imposed by the Secretary of State. In the particular case, whilst I am aware that the sponsor may not have understood the intricacies of the Immigration Rules, he could easily have complied with the requirements of those Rules by paying his entire net salary into his bank account and thereafter removing cash from the account for his own use. It is difficult to see why either the respondent or, indeed, the Tribunal should assist an appellant and sponsor in circumstances where they have not assisted themselves. I note what the judge says regarding the HMRC document but that document is not one of the documents required under Appendix FM-SE. It is not for the Tribunal to amend the requirements of the Rules to suit the particular circumstances of individual claimants. It follows that the decision should be set aside and the decision in respect of the ECO's refusal remade dismissing the appeal.

5. I note that Article 8 ECHR was pleaded in the grounds of appeal to the First-tier Tribunal but no reference was made to Article 8 in the appellant's submissions to the Upper Tribunal.

Notice of Decision

The decision of the First-tier Tribunal which was promulgated on 8 September 2015 is set aside. I remake the decision. The appellant's appeal against the decision of the Entry Clearance Officer, New Delhi dated 31 July 2014 is dismissed under the Immigration Rules and on human rights (Article 8 ECHR) grounds.

No anonymity direction is made.

Signed

Date 26 February 2016

Upper Tribunal Judge Clive Lane