



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: HU/00770/2016

**THE IMMIGRATION ACTS**

Heard at Field House  
On 19<sup>th</sup> October 2017

Decision & Reasons Promulgated  
On 9<sup>th</sup> November 2017

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

MRS SARMIN BEGUM  
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

ENTRY CLEARANCE OFFICER - NEW DELHI

Respondent

**Representation:**

For the Appellant: Mr M K Mustapha (Solicitor)

For the Respondent: Mr C Avery (HOPO)

**DECISION AND REASONS**

1. This is an appeal against a determination of First-tier Tribunal Judge A M Black, promulgated on 18<sup>th</sup> May 2017, following a hearing at Taylor House on 10<sup>th</sup> May 2017. In the determination, the judge dismissed the appeal of the Appellant, whereupon the Appellant 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, a citizen of Bangladesh, and was born on 1<sup>st</sup> September 1991. She appealed against the decision of the Respondent Entry Clearance Officer dated 13<sup>th</sup> November 2015, refusing her entry clearance as a partner under Appendix FM of the Immigration Rules of her husband, Mr Mohammed Abdul Karim, who is a British citizen.

### **The Appellant's Claim**

3. The basis of the Appellant's claim is that she and the Sponsor were married in Bangladesh and their marriage was registered in that country on 21<sup>st</sup> March 2014. They lived together as man and wife in the family home in Bangladesh until the Sponsor returned to the UK a few weeks later. They had not lived together since. The Sponsor was unable to travel back to Bangladesh due to his job and other commitments. The date of the application to enter was in 2015. The last time that they cohabited together was in March 2014 when the Sponsor was in Bangladesh. The couple do, however, keep in contact by telephone, and WhatsApp etc. The Sponsor also sends funds to the Appellant for her maintenance. The judge, in considering these facts, observed that, "the couple's family life is very limited indeed. They married in the knowledge that they could only live in the UK together if the Appellant met the criteria for entry clearance as the Sponsor's spouse" (paragraph 15).

### **The Basis of the Refusal**

4. The reason why the application of the Appellant was refused to join her sponsoring husband in the UK was that she had submitted an unsigned cheque to demonstrate her Sponsor's employment in one particular month in a sequence of months. There was only one unsigned cheque. However, the Respondent ECO incorrectly stated that there was more than one such cheque. As the judge observed, "it is not in dispute that the Appellant had submitted such a document" (paragraph 23). The unsigned cheque was then rejected by the bank, but a deposit had been subsequently been made by the Sponsor's employer by way of a bank transfer for the equivalent sum, such that the "funds cited in the cheque had been credited to the Sponsor's account" (paragraph 23).

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

5. On the basis of the above facts, the judge observed that there was "an anomaly which was not addressed by the applicant in her application", namely, the crediting of the unsigned cheque by the employer paying the equivalent amount into the Sponsor's account. The Appellant herself submitted that she had complied with the evidential requirements of paragraph 2(c) of Appendix FM-SE, which required the Appellant to provide "personal bank statements corresponding to the same period(s) as the payslips at paragraph 2(a), showing that the salary has been paid into her account ...".

6. The judge went on to determine this “anomaly” on the basis that, “while that was the case, it was not unusual for the Respondent to address the anomaly presented by the unsigned cheque and bank statement. In the absence of any explanation from the Appellant, or an explanatory further bank statement, the Respondent was entitled to conclude that an unsigned cheque was not sufficient to cause funds to be credited to a bank statement; it was reasonable for the Respondent to conclude that the Sponsor had not given a genuine account of his employment” (paragraph 23).
7. The appeal was dismissed.

### **Grounds of Application**

8. The grounds of application state that given that the judge had accepted (at paragraph 23) that, “the Respondent was incorrect in stating that more than one unsigned cheque was provided”, it was wrong for the judge then to dismiss the appeal on the basis that there was an “anomaly” that was not addressed by the Appellant in her application. This is because the bank statement in the Respondent’s bundle clearly indicated that cheques deposited on 7<sup>th</sup> October 2015, unpaid cheque on 12<sup>th</sup> October 2015, and the employer Olive Indian Cuisine, made a payment, then remaking a correction on 14<sup>th</sup> October 2015, and that this sufficed to address the anomaly.
9. Furthermore, the bank statement itself clarified the position and this was clear from pages 19, 20, and 22 of the Respondent’s bundle. It was certainly not clear from this, how the judge would have stated (at paragraph 24) that, “it called into question the genuineness of the employment”.
10. In any event, the judge erred in stating (at paragraph 24) that, “this is not an appeal under the Immigration Rules” given that this was an entry clearance application under the Family Migration Rules with reference to Appendix FM-SE of the Immigration Rules, and money accredited into the Sponsor’s bank account on 7<sup>th</sup> October 2015 (see page 22 of the Respondent’s bundle) should have enabled the Secretary of State to exercise discretion, in the absence of which the judge ought to have allowed the appeal.
11. On 14<sup>th</sup> August 2017 the Tribunal allowed the application and granted permission to appeal. This was particularly so given that the Appellant had submitted six months payslips and letters of employment from both employment and bank statements as required. The unsigned cheque had been issued inadvertently by the employer and the Sponsor deposited this and it was credited. Subsequently the unpaid cheque was debited and the employer transferred money credited to the Sponsor’s bank account. This correction was made prior to the date of application. Accordingly, a different construction should have been placed upon the bank documentation.
12. A Rule 24 response was entered by the Respondent Entry Clearance Officer on 13<sup>th</sup> September 2017 to the fact that the Tribunal had directed itself appropriately and the assessment of the evidence was a matter for the judge.

## Submissions

13. At the hearing before me on 19<sup>th</sup> October 2017 Mr Mustapha, appearing on behalf of the Appellant made two submissions.
14. First, that as a matter of proportionality the judge had erred in law (at paragraphs 27 to 28) by stating that the Appellant did not satisfy the financial requirements of Appendix FM. At the time of the decision the Appellant could point to funds of £19,344, as well as at the time of the hearing before the judge.
15. Second, all the specified evidence, under paragraph 2 of Appendix FM-SE was submitted and at paragraph 23 of the determination, the judge accepts this. The finding of the judge was therefore clearly unsustainable. This was so because the judge then went on wrongly to question the “genuineness” of the apparent relationship of the sponsoring husband. However, the HMRC employment history (see pages 14 of the Appellant’s bundle) clearly confirmed the start date, the salary, and the name of the employer (see page 4 of 14). Thereafter the HMRC annual tax summary (see page 5 of 14) confirmed that the Sponsor’s annual taxable income was £19,344. I
16. In any event, when the Respondent stated that there was a discrepancy between the payslip and the bank statement, this was a mistake of fact by the Secretary of State because one only has to look at the payslip (which Mr Mustapha handed up) to see that the payslip is at pages 14 to 16 of the Appellant’s bundle for the Olive Indian Cuisine Ltd and for the Bhatti Indian Cuisine.
17. Finally, it is clear from documentation relating to the Olive Indian Cuisine (at pages 11 to 13), as well as the documentation for the Bhatti Indian Cuisine (at pages 19 to 21) that the Appellant was in genuine employment. The Appellant had submitted bank statements (at pages 26 to 32 of the bundle) to help her clarify the situation. The judge had placed undue emphasis on one unsigned cheque at a time of the decision.
18. However, there was a perfectly innocent explanation for this. This was there on 6<sup>th</sup> October 2015, the employer had inadvertently submitted an unsigned cheque and the Sponsor had paid this into his bank, which had credited it to his account on 7<sup>th</sup> October 2015 (see page 32 of his bundle), only then on 12<sup>th</sup> October to see that cheque being returned (see page 33), but that before the date of the application on 27<sup>th</sup> October 2015, the employer on 14<sup>th</sup> October 2015 had already transferred the correct amount into the Sponsor’s bank account.
19. The point, submitted Mr Mustapha in his eloquent submissions before me, was that the specified evidence was before the ECO and he was duty bound to take into account the HMRC employment history, which had also been submitted, such that no confusion as to the genuineness of the employment ought to have arisen.
20. For his part, Mr Avery submitted that the issue before this Tribunal was a narrow one. One of the cheques had not been signed. It created a suspicion. The suspicion was referred to quite reasonably by the judge (at paragraph 23 of the determination),

when it was held that it was not unreasonable for the ECO to conclude as he did. There was a flaw. There was an explanation given for the flaw. It was open now to the Appellant to make a fresh application.

21. In reply, Mr Mustapha submitted that the anomaly arose as a result of an unsigned cheque. However, Appendix FM does not prescribe the mode of payment. Since the matter was then addressed specifically in the Notice of Appeal, and addressed also at the hearing before the judge, it was up to the judge thereafter to assess the genuineness of the employment, on the evidence before the Tribunal, take into account the HMRC documents, and the relevant employment history, before concluding whether the employment of the Sponsor was "genuine" or not. There could only have been one answer, namely, that the employment was indeed genuine and that there had simply been an anomaly of a single unsigned cheque which had subsequently been addressed prior to the application by the employer himself.

### **Error of Law**

22. 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.
23. This is a case where, as Mr Avery has submitted, the issue before the Tribunal was a narrow one. That narrow issue related to a single unsigned cheque. In relation to this, the judge had earlier stated that, the Respondent was incorrect in stating that more than one unsigned cheque was provided" (paragraph 23). Thereafter funds were credited to the Sponsor's account. It is not the case that this "anomaly" was not addressed by the Appellant in their application.
24. But more importantly, the issue was simply one of the genuineness of the employment, and there was ample evidence in the form of HMRC documents, payslips, and bank statements, to confirm that it was a genuine employment. All that Appendix FM requires at paragraph 2(c) is that, "personal bank statements corresponding to the same period(s) as the payslips at paragraph 2(a), showing that the salary has been paid into an account in the name of the person or in the name of the person and their partner jointly" is complied with.
25. In this case, there was no reason to think that it had not been complied with. The Sponsor's employer Olive Indian Cuisine, made a correction on 14<sup>th</sup> October 2015, with respect to the unsigned cheque of 7<sup>th</sup> October 2015. It is the bank statement which is referred to at paragraph 2(c) of Appendix FM-SE and it was the Sponsor's bank statement which clarified the position whilst the correction by the employer had been made on 15<sup>th</sup> October 2015. The mistake of leaving a cheque unsigned is not unknown.
26. The relevant issue was not that of the cheque but of the bank statement. By the time of the decision of the Entry Clearance Officer the matter had been clarified by the employer subsequently crediting the Sponsor's bank account. When considered in the context of other official documents, such as the HMRC bank statements, and the

payslips, it is plain that there was ample evidence to confirm that the employer was genuinely employed on a salary of £19,344.

**Re-Making the Decision**

27. 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. I am allowing this appeal for the reasons that have been set out above. I have found Mr Mustapha's submissions to be compelling, and for the reasons set out in the Grounds of Appeal and the grant of permission, I am allowing this appeal.

**Notice of Decision**

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.

No anonymity direction is made.

Signed

Date

Deputy Upper Tribunal Judge Juss

8<sup>th</sup> November 2017