



**Upper Tribunal
(Immigration and Asylum Chamber)
HU/09449/2015**

Appeal Number:

THE IMMIGRATION ACTS

**Heard at Birmingham Employment Decision Promulgated
Centre On 12 December 2017 On 19 December 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE McCARTHY

Between

ENTRY CLEARANCE OFFICER, SHEFFIELD

Appellant

and

**WAQAS RAFIQ
(NO ANONYMITY ORDER MADE)**

Respondent

Representation:

For the Appellant: Mr D Mills, Senior Home Office Presenting Officer
For the Respondent: Mr I Hussain, Syed Law Office Solicitors

DECISION AND REASONS

- 1.** The respondent was born on 22 September 1985 and is a citizen of Pakistan. On 1 July 2015, he applied to join his wife in the UK. His application was refused on 13 October 2015 because the appellant was not satisfied the respondent satisfied the relationship and/or financial requirements of appendix FM to the immigration rules.
- 2.** The appellant deems a refusal to grant entry clearance under appendix FM to be a refusal of a human rights claim. It is against this deemed decision that the respondent appealed to the First-tier Tribunal, as he was entitled to do under s.82(1)(b) of the Nationality, Immigration and Asylum Act 2002 (as amended by the Immigration Act 2014). The grounds of appeal to the

First-tier Tribunal were limited to whether the appellant's decision was unlawful under s.6 of the Human Rights Act 1998.

3. On 6 January 2017, the Tribunal promulgated the decision and reasons statement of First-tier Tribunal Judge Borsada. Judge Borsada decided the respondent met the requirements of appendix FM in full and therefore his appeal should be allowed.
4. I have set out this background because the appellant's grounds of appeal to the Upper Tribunal argue that Judge Borsada erred by not carrying out the necessary proportionality exercise to determine whether article 8 ECHR had been violated.
5. Mr Mills admitted that he had difficulty defending the grounds of appeal. Although there may be an error in the way Judge Borsada conducted the Razgar assessment, it was difficult to see how any such error might be material. The appellant's position in cases such as these is that the provisions of appendix FM are compliant with article 8 and therefore if someone meets those provisions then refusing admission would be contrary to s.6 of the Human Rights Act 1998. Judge Borsada found the appellant met the requirements of appendix FM.
6. Mr Mills reminded me that the author of the grounds (which was not him) had not challenged the findings made by Judge Borsada regarding the relationship and financial requirements. Mr Mills suggested as an aside that there may have been some bases on which to challenge the financial requirements but the author of the grounds had not done so and it was too late to introduce any such concerns at the hearing.
7. Once Judge Borsada had made those findings that the respondent met the provisions of appendix FM, the only logical outcome open to him would be to allow the appeal because the public interest was not to exclude the respondent from the UK. I am aware this was, in fact, the focus of the remainder of paragraph 8 of the decision and reasons statement, as Mr Hussain identified in the rule 24 response. I am satisfied Judge Borsada reached a conclusion that was open to him on the facts that he found.
8. In light of the above, as I indicated at the end of the hearing, there was no need for me to hear submissions from Mr Hussain because I was satisfied there was no legal error in Judge Borsada's decision and reasons statement.

Decision

There is no legal error in Judge Borsada's decision and his decision is upheld.

The Entry Clearance Officer's appeal is dismissed.

Signed

Date

12 December 2017

Judge McCarthy
Deputy Judge of the Upper Tribunal