



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

Appeal Number: OA/05463/2015

THE IMMIGRATION ACTS

Heard at Birmingham

**Decision &
Promulgated
On 2 May 2017**

Reasons

On 9 January 2017

Before

**DR H H STOREY
JUDGE OF THE UPPER TRIBUNAL**

Between

**SIDRA BIBI
(ANONYMITY DIRECTION NOT MADE)**

and

ENTRY CLEARANCE OFFICER - ISLAMABAD

Appellant

Respondent

Representation:

For the Appellant: Sponsor, Mr Imran Siddique

For the Respondent: Mrs H Aboni, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Pakistan. On 20 February 2015 the Entry Clearance Officer (hereafter the respondent) refused her application dated 19 November 2014 for entry clearance as a spouse. The respondent stated that she did not meet the income threshold requirement under Appendix FM and/or the related evidential requirements under Appendix FM-SE. The appellant appealed. In a decision sent on 7 March 2016 First-tier Tribunal (FtT) Judge Heatherington dismissed her appeal. The appellant was successful in being granted permission to appeal, bringing the case before me.
2. At the hearing Mr Siddique, the sponsor and husband of the appellant, appeared on behalf of the appellant. As the appellant was not legally represented, I informed him I would do all I could to ensure he was able to present his wife's case effectively. I then heard submissions from Mrs Aboni and Mr Siddique.
3. I should record first of all that although the respondent also expressed doubt that the appellant was in a genuine relationship with the sponsor, this does not appear to have been maintained by the Presenting Officer at the hearing before the FtT Judge and the latter proceeded on the basis the appellant was entitled to succeed if she satisfied the income threshold and related evidential requirements. Nor did Mrs Aboni renew any issue regarding the genuineness of the relationship. Accordingly, the appellant is entitled to succeed in her appeal if able to show that the judge erred in dismissing the appeal under the Immigration Rules on income threshold and related evidential requirements.
4. The main point regarding the Rules referred in the appellant's grounds is that the respondent's assessment of her income failed to take into account her own Immigration Directorate Instructions at 9.3.8 and Appendix FM, that self-employed income can be cash in hand. However, even assuming the points raised in the grounds regarding the sponsor's income were accepted, that does not establish that the judge materially erred. The respondent's refusal was also based on a failure on the ground of the appellant to meet the requirements of ECP 3.3(h) to the effect that among the documents that 'must also be submitted' are:

“(bb) if the applicant's business is not required to produce annual audited accounts, the latest unaudited accounts and an accountant's certificate of confirmation ...”.

Unfortunately for the appellant, although unaudited accounts were submitted, they did not cover the entirety of the tax year 2013-2014. They only covered up to August 2013.

5. Mr Siddique submitted that unaudited accounts covering the entirety of the tax year 2013-2014 were submitted. He said they were submitted

with his second application, although not in his first. He is correct insofar as further unaudited accounts were submitted, but that was not until February 2016, in time for the hearing before the FtT Judge. They were not submitted with the application nor were they even placed before the respondent by the date of decision. Accordingly, the judge did not materially err in concluding that the appellant could not meet the requirements of the Rules.

6. The grounds also challenge the judge's decision to also dismiss the appeal on Article 8 grounds, but essentially the grounds at this point do no more than voice disagreement with the judge's assessment and fail to disclose any error of law. Particularly given that even on the couple's own evidence they had spent very little time together in the past five years, it was entirely within the range of reasonable responses for the judge to have concluded that the appellant had failed to show compelling circumstances.
7. As I mentioned to the sponsor at the hearing, if I refused the grounds of appeal (as I have), then he will need to make a further application to the respondent. Given that he has already submitted copious documents, that will be disappointing to him. Whilst it is ultimately a matter for the respondent, I would expect that the respondent will not seek to raise again any doubts about the genuine nature of the relationship.

Notice of Decision

8. For the above reasons the appeal is dismissed. The FtT Judge did not materially err in law and his dismissal of the appellant's appeal is upheld.
9. No anonymity direction is made.



Signed

Dated 28 April 2017

Dr H H Storey
Judge of the Upper Tribunal