



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

Appeal Numbers: HU/02854/2017  
HU/02856/2017  
HU/02858/2017

**THE IMMIGRATION ACTS**

**Heard at Manchester CJC  
On 1<sup>st</sup> November 2018**

**Decision & Reasons  
Promulgated  
On 3<sup>rd</sup> December 2018**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE JUSS**

**Between**

**(1) H N**

**(2) W N**

**(3) M M K**

**(ANONYMITY DIRECTION MADE)**

Appellants

**and**

**ENTRY CLEARANCE OFFICER, ISLAMABAD**

Respondent

**Representation:**

For the Appellants: Mr R Ahmed (Counsel)

For the Respondent: Mr A Tan (Senior Home Office Presenting Officer)

**DECISION AND REASONS**

1. This is an appeal against the determination of First-tier Tribunal Judge Bashir, promulgated on 10<sup>th</sup> July 2018 following a hearing in Bradford on 21<sup>st</sup> June 2018. In the determination, the judge dismissed the appeal of the Appellants, whereupon the Appellants subsequently applied for, and

were granted permission to appeal to the Upper Tribunal, and thus the matter comes before me.

### **The Appellants**

2. The Appellants are a family of a wife and two children of Mr Naeem Ahmad, who is present and settled in the United Kingdom. The issue before the Entry Clearance Officer was whether there was a genuine and subsisting relationship between the Appellant and his wife, and whether he could demonstrate that she met the financial requirements of paragraph E-ECP.3.3.

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

3. The judge, in a detailed and extensive determination, concluded that the relationship between the First Appellant, and her Sponsor husband in the UK, was plainly genuine and subsisting. In fact, by the time that the appeal came before Judge Bashir, the Entry Clearance Manager's review had dropped the allegation that the relationship was not genuine and subsisting, and the judge confirmed that it was plainly so (at paragraph 13).
4. The outstanding issue, therefore, before Judge Bashir, was whether the financial requirements could be met in this case. The judge had regard to the invoices from Dubai Stores Limited for the requisite period that the Appellant's husband was working (see paragraph 16).
5. On this basis the judge went on to say that, "I find the Sponsor was genuinely employed by Dubai Stores Limited at the date of application, however he was not employed at the time of the Enrichment Activity and the decision in January 2017" (paragraph 16).
6. At the end of the determination, the judge observed that the Sponsor had ceased employment in January 2017. The Sponsor maintained that he had been in continuous employment since August 2017 earning above the income threshold. That being so the judge concluded that "It is open for the Appellants to reapply for entry clearance with the appropriate documentation" (paragraph 25).
7. The appeal was dismissed.

### **The Grounds of Application**

8. The grounds of application state that the judge erred in that, having found that at the date of the application and the hearing the Sponsor met the minimum income requirements, that the only issue was whether it would be disproportionate to require the Appellants to reapply for entry clearance. This was the case because in these circumstances, the appeal should simply have been allowed.

9. On 3<sup>rd</sup> August 2018, permission to appeal was granted.

### **Submissions**

10. At the hearing before me on 1<sup>st</sup> November 2018, there was agreement between Mr Tan, the Senior Home Office Presenting Officer and Mr Ahmed, that the judge having found that at the date of the application and the hearing the Sponsor met the minimum income requirements, that the appeal should really have been allowed. That being so, this matter can be disposed of by allowing the appeal of the Appellant because it was plainly an error to suggest that, if the Appellants did comply with the requirements of the Immigration Rules, then it would not be disproportionate to require them to apply again, with an additional fee being paid.

### **Error of Law**

11. I am satisfied that the making of the decision of the judge involved the making of an error on a point of law (see Section 12(1) of TCEA 2007) such that I set aside the decision. I do so for the reasons already given above.

### **Remaking the Decision**

12. I have remade the decision on the basis of the findings of the original judge, the evidence before her, and the submissions that I have heard today. I am allowing this appeal for the reasons that have been given.

### **Decision**

13. The decision of the First-tier Tribunal involved the making of an error on a point 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.

14. An anonymity order is made.

### **Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008**

Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date

Deputy Upper Tribunal Judge Juss

23<sup>rd</sup> November 2018

**TO THE RESPONDENT**  
**FEE AWARD**

As I have allowed the appeal and because a fee has been paid or is payable, I make a fee award of any fee which has been paid or may be payable.

Signed

Date

Deputy Upper Tribunal Judge Juss

23<sup>rd</sup> November 2018