



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: HU/06045/2018

**THE IMMIGRATION ACTS**

Heard at Manchester  
On February 4, 2019

Decision & Reasons Promulgated  
On 22 February 2019

Before

DEPUTY UPPER TRIBUNAL JUDGE ALIS

Between

MRS GITABEN GAJPARIA  
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Ms Randerer, Legal Representative

For the Respondent: Mr Tan, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant entered the United Kingdom on April 23, 2013 with leave to remain as a spouse until March 4, 2015. On April 25, her leave was extended further as the spouse of a settled person until February 25, 2017.
2. On February 2, 2017 she made an application for indefinite leave to remain as a spouse. The respondent refused her application on February 16, 2018 on the basis that she failed to satisfy paragraph 287(a)(v) HC 395 as she failed to demonstrate the

parties would be able to maintain themselves adequately without recourse to public funds.

3. The appellant appealed this decision on March 2, 2018 under Section 82(1) of the Nationality, Immigration and Asylum Act 2002 arguing the respondent had failed to take into account the appellant's savings. She also submitted the financial evidence that had been submitted demonstrated that the relevant paragraph of the Immigration Rules had been met.
4. The appellant's appeal was heard by Judge of the First-tier Tribunal Thorne on May 15, 2018 and in a decision promulgated on June 4, 2018 the Judge dismissed her appeal. The main reason for dismissing the appeal was because the Judge noted she was required to provide bank statements for the six months prior to the date of application.
5. Permission to appeal was sought on June 19, 2018 and Judge of the First-tier Tribunal Haria found it was arguable there had been an error in law because the Judge had overlooked paragraph A1.1(l) of Appendix FM-SE of the Immigration Rules which allowed the applicant to produce the specified evidence relating to the period which ends with the date of application and that evidence or the most recently dated part of the evidence must be dated no earlier than 28 days before the date of the application. In other words, it was arguable the Judge had misinterpreted the requirements of Appendix FM-SE of the Immigration Rules.
6. No anonymity direction is made.

### **PRELIMINARY ISSUES**

7. At the outset Mr Tan indicated that he accepted the Judge had misapplied the law in respect of Appendix FM-SE of the Immigration Rules. He also accepted that the bank statements that were contained in the appellant's bundle, which were said to have been sent to the respondent, demonstrated that the financial requirements of the Rules were met.

### **FINDINGS**

8. In light of the identified error in approach and the fact it was accepted the appellant did satisfy the Immigration Rules I am satisfied that there was a material error. The appellant satisfied paragraph 287 HC 395 and was therefore entitled to succeed under Article 8 in light of recent case law.
9. I therefore set aside the decision and I remake the decision and allow the appeal on human rights grounds.
10. If the application had been properly adjudicated upon the appellant would have been entitled to indefinite leave under the Rules. The length of any leave under article 8 ECHR is a matter for the respondent but should be considered against the above background.

**DECISION**

11. I set aside the decision and I allow the appeal on human rights grounds.

Signed

Date 19 February 2019

Deputy Upper Tribunal Judge Alis

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

As I have allowed the appeal and because a fee has been paid or is payable, I have considered making a fee award and have decided to make a whole fee award of £140.

Signed

Date 19 February 2019

Deputy Upper Tribunal Judge Alis