



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: HU/10440/2018

**THE IMMIGRATION ACTS**

Heard at Field House  
On 11 March 2019

Decision & Reasons Promulgated  
On 20 March 2019

Before

DEPUTY UPPER TRIBUNAL JUDGE HILL QC

Between

MS HANANE NAILI  
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Not present or represented  
For the Respondent: Ms S Jones, Home Office Presenting Officer

**DECISION AND REASONS**

1. This is an appeal from the decision of First-tier Tribunal Judge Nixon which was promulgated on 11 December 2018.

2. The appellant did not attend the hearing of the appeal. I put the matter to the end of my list but by midday she had not arrived nor was there any representative present on her behalf. In the absence of any message from her I considered that it was in the interests of justice to proceed with the appeal in her absence. A substantial bundle of papers had been lodged by her in respect of the appeal, and it seemed implicit from the covering letter that she was content for it to be determined irrespective of her presence.
3. I duly heard from Ms Jones for the Respondent and delivered an *ex tempore* decision allowing the appeal. After the conclusion of the hearing, an email was received from Ali Balashe, the appellant's fiancé and sponsor. He apologised for not attending the hearing as a cousin had died unexpectedly the day before. In the light of the favourable disposal of the appeal, it is necessary to revisit the matter.
4. The appellant is a citizen of Morocco whose application for entry clearance was refused on 4 April 2018. The reason for refusal was an incomplete run of payslips covering a six month period prior to the date of application, a strict requirement of Appendix FM-SE.
5. The judge dealt with whether the appellant had satisfied the requirements of Appendix FM-SE as follows:
  - "13. I have not been provided with a bundle on behalf of the respondent and am therefore not aware of what evidence was seen by the respondent. In any event I remind myself that the obligation rests on the appellant to satisfy me that she met the necessary criteria and it was therefore her responsibility to ensure that I had before me the documents relied on.
  14. I have been through the appellant's bundle in some detail and have seen that it contains on 15<sup>th</sup> December 2018 and I am therefore concerned with the six month period prior to that date (on the assumption from the headed payslips that the sponsor had been working for Royal Mail for more than six months). I remind myself that the requirements to meet the criteria for financial requirements under Appendix FM-SE statement the appellant should provide six months of payslips, six months of personal bank statements and a letter from the employer stating that the period of employment and gross salary.
  15. I have not been provided with a letter from the sponsor's employer but I am prepared to assume that he has worked for the same employer for twelve months or more owing to the number of payslips provided. I have seen all six months payslips bar one (for the week commencing 11 January 2018) have been provided. I note that there is a corresponding deposit to the sponsor's bank account for pay for the missing week.

16. I have looked in some detail at the bank statements and note that the dates between 18 July 2017 and 1 September 2017 are missing. It is therefore clear to me that this is not a case where simply one payslip is missing and therefore the respondent would have been expected to use her discretion over the evidential flexibility Rule error as submitted by the appellant. Over a month's bank statements and the employer's letter are also missing. Whilst it may well be argued that it seems apparent that the sponsor is earning over the £18,600 threshold that evidence has not been appropriately provided. Bearing in mind the issue raised in the refusal is only in respect of that requirement I would have expected the appellant would have been able to ensure that all of the necessary documentation was before me. She has failed to do this and whilst I have some sympathy for her position the Rule set out very clearly what is required. I find that she has failed to meet the Rules."

6. It is accepted by Ms Jones on behalf of the Secretary of State, as it was by the judge, that the single documentary deficit identified by the Entry Clearance Officer had been adequately addressed by the time the matter came before the First-tier Tribunal. The matters on which the judge dismissed the appeal were not ones which had been raised by the Entry Clearance Officer.

7. Where, as is now conceded by the Secretary of State, all the missing documentation identified by the ECO had been provided, it was unfair of the judge to dismiss the appeal on a basis not advanced by the Secretary of State nor part of the ECO's reasons for refusal.

8. At the very least, the judge should have afforded the appellant the opportunity of making good any apparent deficit or navigating the judge to the documentation that was probably there already, albeit not well collated. I am satisfied, in the light of the concession properly made on behalf of the Secretary of State, that this constitutes an error of law and the decision must be set aside.

9. In remaking the decision, I give effect to Ms Jones' concession that the requirements of the Rules are satisfied by the documentation provided by the appellant. I therefore allow the appellant's appeal under the Immigration Rules.

### **Notice of Decision**

- (1) Decision of First-tier Tribunal set aside;
- (2) Decision remade allowing the appellant's appeal under the Immigration Rules;
- (3) No anonymity direction is made.

Signed *Mark Hill*

Date 19 March 2019

Deputy Upper Tribunal Judge Hill QC