



**Upper Tribunal  
(Immigration and Asylum Chamber)**  
2022-002292

Appeal Number: UI-  
(HU/04646/2021)

**THE IMMIGRATION ACTS**

**Heard at Field House  
on 14 September 2022**

**Decision & Reasons Promulgated  
On 21 October 2022**

**Before**

**UPPER TRIBUNAL JUDGE CANAVAN**

**Between**

**ENTRY CLEARANCE OFFICER**

Appellant

**and**

**FAIZAN HABIB**

Respondent

**Representation:**

For the appellant: Mr S. Walker, Senior Home Office Presenting Officer

For the respondent: Mr J. Dhanji, instructed by Direct Access

**DECISION AND REASONS**

1. For continuity, I will refer to the parties as they were before the First-tier Tribunal although technically the Entry Clearance Officer, represented by the Secretary of State, is the appellant in the appeal to the Upper Tribunal.
2. The original appellant (Mr Habib) appealed the respondent's (ECO) decision to refuse a human rights claim in the context of an application for entry clearance as the spouse of a British citizen.

3. First-tier Tribunal Judge T.J. Carey ('the judge') allowed the appeal in a decision sent on 21 February 2022. The entry clearance application was refused on the sole issue of whether the UK sponsor met the income threshold for the purpose of the 'Financial Requirement' of Appendix FM. The judge conducted a detailed review of the evidence, including more up to date evidence indicating that the sponsor now earned a higher income from one of her two sources of employment. He noted that the evidence was incomplete in that there were no up to date payslips. He directed himself to the decision in *MM (Lebanon) v SSHD* [2017] UKSC 10 and took into account the underlying public policy consideration for the £18,600 threshold. He was satisfied that the evidence showed that the UK sponsor's income exceeded the threshold at the date of the hearing. For this reason, he concluded that the refusal of entry clearance interfered with the appellant's right to family life in a disproportionate way.
4. The Secretary of State appealed the First-tier Tribunal decision. The grounds made general submissions on the evidence expressing disagreements with the decision. At the hearing, Mr Walker accepted that there were some factual errors in the grounds that rendered them unsustainable despite the grant of permission by a First-tier Tribunal judge. He was not able to concede the appeal but made no further submissions. Mr Dhanji pointed out why the calculations in the First-tier Tribunal decision were more accurate than those set out in the grounds.
5. The judge accepted that the evidence before the ECO only showed a combined income of £16,714.30 from two sources of employment [32]. He went on to consider further evidence from AHZ Solicitors dated 12 May 2021 confirming that the UK sponsor started a training contract with them on 01 May 2021 and that her annual salary was £19,000 [33]. There was evidence to suggest that the training contract was registered with the Solicitors Regulation Authority. The letter was not accompanied by pay slips or bank statements [34].
6. In any event, the judge went on to note that there was evidence of an earlier pay rise on 01 January 2021 when her salary increased from £13,000 to £14,000 [35]. This was reflected in the sponsor's payslips for January-April 2021. When this was combined with the evidence of £6,000 income from her employment with Kadiri Foods Limited he was satisfied on the balance of probabilities that the UK sponsor's income was likely to exceed the £18,600 threshold.
7. For the reasons given by both parties, I find that the First-tier Tribunal decision did not involve the making of an error of law. The judge made findings relating to the UK sponsor's income that were open to him on the evidence. He directed himself to the relevant legal framework outlined in *MM (Lebanon)*. Although the gaps in the evidence meant that the appellant would not meet the evidential requirements of Appendix FM-SE, those requirements are largely for the administrative convenience of the Entry Clearance Officer in order to determine whether the sponsor is likely to earn the relevant level of income. In an appeal brought on human rights

grounds, it was open to the judge to conduct a broad assessment under Article 8. Having concluded that the evidence showed that the UK sponsor's income was now likely to exceed the threshold, it was open to him to find that the public interest considerations that underpin the threshold had been addressed and refusal of entry clearance was disproportionate.

8. I conclude that the First-tier Tribunal decision did not involve the making of an error on a point of law. The decision shall stand.

## DECISION

The First-tier Tribunal decision did not involve the making of an error on a point of law

The decision shall stand

Signed M. Canavan                      Date 14 September 2022  
Upper Tribunal Judge Canavan

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### **NOTIFICATION OF APPEAL RIGHTS**

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within the **appropriate period** after this decision was **sent** to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent:
2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically)**.
3. Where the person making the application is in detention under the Immigration Acts, **the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically)**.
4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days (10 working days, if the notice of decision is sent electronically)**.
5. A "working day" means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.
6. The date when the decision is "sent" is that appearing on the covering letter or covering email