



**IN THE UPPER TRIBUNAL**  
**IMMIGRATION AND ASYLUM CHAMBER**

**Case No: UI-2023-001173**  
**First-tier Tribunal No:**  
**HU/54022/2022**  
**IA/06099/2022**

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**  
**On the 13 June 2023**

**Before**

**Deputy Upper Tribunal Judge MANUELL**

**Between**

**MR VARINDER SINGH**  
**(NO ANONYMITY DIRECTION MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr M Adophy, Counsel  
(instructed by Privilege Solicitors)

For the Respondent: Mr C Avery, Senior Home Office Presenting Officer

**Heard at Field House on 09 June 2023**

**DECISION AND REASONS**

1. Permission to appeal was granted by Upper Tribunal Judge Reeds on 26 April 2023 against the decision to dismiss the Appellant's Article 8 ECHR private and family life appeal (based on his marriage to a British Citizen) made by First-tier Tribunal Judge Chana in a decision and reasons promulgated on 11 December 2022. (Permission to appeal had been refused by First-tier Tribunal Judge Khurram on 29 March 2023.)

2. The Appellant, a national of India born on 9 December 1989, had applied for leave to remain as the partner of a British Citizen under Appendix FM and under paragraph 276ADE(1)(vi) of the Immigration Rules and on Article 8 ECHR grounds on 11 May 2022. The application was refused by the Secretary of State for the Home Department on 21 June 2022.
3. Judge Chana noted that the Respondent had accepted that the Appellant met the Eligibility Relationship Requirement and the Eligibility English Language Requirement of Appendix FM of the Immigration Rules. But the Appellant had been in the United Kingdom unlawfully for 10 years so did not meet the Eligibility Immigration Status Requirement of Appendix FM. Nor did he meet the Eligibility Financial Requirement, as his sponsor had not produced the specified evidence, as set out in Appendix FM-SE. The Immigration Rules were not met. Judge Chana found that paragraph EX.1 did not apply as the couple could live together in India without any significant difficulties, i.e., there were no insurmountable obstacles. Alternatively, the Appellant could return to India and seek entry clearance to join his wife while she remained in the United Kingdom. As to the Appellant's private life claim, the Appellant could return to India and reintegrate without encountering very significant obstacles and it was proportionate for him to do so in view of his lengthy overstay. There were no exceptional circumstances and there was no Article 8 ECHR disproportionality, within or outside the Immigration Rules. Hence the appeal was dismissed.
4. Permission to appeal granted by UTJ Reeds because it was considered arguable that the necessary consent form for the Respondent to check financial compliance had been provided by the Appellant prior to the human rights application. It was accepted by the Appellant that there were some missing bank statements but there was no finding on the evidence that the Appellant's partner could not meet the threshold required of £18,600. It was arguable in the light of the arguable mistake as to the consent form that the overall assessment of the financial issue may have been flawed. Although the grounds provided no supporting basis for the second argument that there was any legitimate expectation based on marriage in the United Kingdom, the challenge embraced the general assessment of Article 8 ECHR and placed some reliance on ground 1, so the grant was not restricted.
5. The Respondent filed a rule 24 notice dated 15 May 2023, opposing the onwards appeal. It was submitted that, whether or not the judge had erred in her assessment of the financial

requirements (which was not accepted by the Respondent), Appendix FM-SE had not been complied with in any event as the required documents for April 2022 had not been produced. It had always been accepted by the Appellant that he did not meet the immigration status requirement of Appendix FM, meaning that he would have to meet paragraph EX.1 even if the financial requirements had been met. Article 8 ECHR findings were required regardless of the financial requirements because the immigration status requirements were not met. The judge's finding that the Appellant could return to India with his partner where they would not face any insurmountable obstacles or he could return alone and seek entry clearance to return to the United Kingdom were consistent with Alam [2023] EWCA Civ 30.

6. Mr Adophy for the Appellant relied on the grounds of appeal and the Upper Tribunal's grant of permission to appeal. In summary he submitted that it was plain that the Appellant had submitted the consent form with his application and that the evidence provided showed that the Eligibility Financial Requirement had been met. The Appellant's sponsor had shown savings of £21,000 in addition to her salary. The judge had not taken all of the evidence into account. The absence of current leave did not prevent the Appellant from making an application under Appendix FM. The couple had been permitted to marry by the Secretary of State which created a legitimate expectation that the Appellant would be allowed to remain in the United Kingdom. Requiring him to return to India merely to obtain entry clearance was contrary to the principles set out in Chikwamba [2008] UKHL 40. The appeal should be allowed.
7. Mr Avery for the Respondent relied on the rule 24 notice. Sustainable findings had been reached by the judge and sufficiently explained. The Appellant did not meet Appendix FM or Appendix FM-SE as the specified evidence had not been produced. It had been open to the judge to find that there were no exceptional circumstances. There was no legitimate expectation arising from the Home Office's grant of permission to marry. Chikwamba (above) did not apply because the Immigration Rules were not met. The appeal should be dismissed.
8. Mr Adophy for the Appellant reiterated the points he had made earlier by way of reply.
9. The tribunal finds that there was no material error of law in Judge Chana's decision, so that the onwards appeal must be dismissed. The grant of permission to appeal by the Upper

Tribunal overlooked the critical fact that, whether or not the Eligibility Financial Requirement of Appendix FM had been met, the Appellant by his own admission and, as was plain on the facts, could not meet the Eligibility Immigration Status Requirement. The judge found that paragraph EX.1 did not apply and gave entirely adequate and unsurprising reasons for that finding. Any issue about the consent form made no difference to the Appellant's inability to meet the Immigration Rules.

10. The evidence in the appeal shows that the Appellant had signed the consent form when submitting his application to the Home Office. It is doubtful that there was any misunderstanding about that by the experienced judge, who considered all of the financial evidence in depth as her decision demonstrates, regardless of any prior consent issue. Specific and clear findings were made about the ways in which the Appellant had failed to comply with Appendix FM-SE, coupled with specific and clear adverse credibility findings about the Appellant's claimed knowledge of his sponsor's current employment. There was no need to discuss the sponsor's savings, which did not alter the situation of non-compliance with Appendix FM-SE.
11. The tribunal accepts Mr Avery's submissions as to the application of Chikwamba. The judge found that the Appellant failed to meet the Immigration Rules in several respects, so there was no scope for waiving the usual requirement for an entry clearance application to be made from abroad. It was not for the judge to assess whether such an application would be granted. There was no satisfactory evidence that the Appellant's wife would suffer any serious difficulties if she chose not to accompany the Appellant when he returned to India or while he was there. It was accepted by the Appellant and by the sponsor that the sponsor had married him in the knowledge that he was in the United Kingdom unlawfully.
12. As to the assertion that the grant of permission to marry by the Home Office dated 21 February 2022 somehow conferred a "legitimate expectation" on the Appellant, while such permission might have potential to cause confusion, the Home Office letter makes it abundantly clear that any subsequent application for leave in any capacity will be subject to the usual procedures, i.e., proof of compliance with any relevant regulation or immigration rule. As UTJ Reeds pointed out, the Appellant's grounds provided no supporting basis for the argument that there was a legitimate expectation based on his marriage in the United Kingdom. No supporting authorities

were cited at the error of law hearing. The tribunal finds that the submission has no substance and is misconceived.

13. The tribunal finds that the judge's Article 8 ECHR findings were all properly open to her and were supported by cogent and logical reasoning. In the tribunal's judgment the experienced First-tier Tribunal Judge made no material error of law. The decision stands unchanged.

### **DECISION**

The appeal to the Upper Tribunal is dismissed.

There was no material error of law in the First-tier Tribunal's decision and reasons, which stands unchanged.

**Signed**

**Dated** 13 June 2023

**R J Manuell**  
**Deputy Upper Tribunal Judge Manuell**