



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

Appeal Number: OA/16857/2013

**THE IMMIGRATION ACTS**

**Heard at Bradford**

**On 3 September 2014**

**Determination  
Promulgated**

**On 24 September 2014**

**Before**

**UPPER TRIBUNAL JUDGE CLIVE LANE**

**Between**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**and**

**ASMA BEGUM**

Respondent

**Representation:**

For the Appellant: Mrs Pettersen, Senior Home Office Presenting Officer  
For the Respondent: Mr Hussain, instructed by McManus Seddon Runhams,  
Solicitors

**DETERMINATION AND REASONS**

1. The respondent, Asma Begum, is a female citizen of Bangladesh. I shall hereafter refer to the respondent as the appellant and to the appellant as the respondent (as they appeared respectively before the First-tier Tribunal). The appellant applied for entry clearance as the spouse of Mohammed Taj Ali (hereafter the sponsor) but her application was refused

on 23 July 2013 on the grounds that she had failed to provide a reliable English language certificate. That original ground for refusal was withdrawn on review but the respondent refused the application subsequently on the basis that the appellant had failed to provide the required evidence of the sponsor's income and thereby show that the sponsor was able adequately to maintain the appellant. The sponsor receives Carer's Allowance which, as Judge Atkinson allowing the appeal in the First-tier Tribunal observed "as a matter of convenience [has been] paid into the sponsor's mother's account rather than the sponsor's account." As a consequence of this arrangement, the appellant had been unable to provide the evidence required under Appendix FM-SE. The appellant was unable to provide at least one personal bank statement in the twelve month period prior to the date of the application showing payment of the benefit or allowance into the sponsor's bank account.

2. Both parties accept that Judge Atkinson had no alternative but to dismiss the appeal under the Immigration Rules because the specified evidence had not been provided. However, at [22] the judge went on to consider Article 8 ECHR. He noted that the payments of Carer's Allowance "are readily identified in bank statements relating to the sponsor's mother's account because not only are they designated as DWP payments but also specified the sponsor's national insurance number and correlate that award letters from the DWP." The judge observed [27] that the respondent's interest in refusing entry clearance related to the need to maintain an effective immigration control. He found [31] that the refusal of the appellant's application amounted to a disproportionate interference with the appellant's and her family's right to respect for a family life.
3. The Secretary of State now appeals, with permission, to the Upper Tribunal. In essence, the appeal turns on the question of the sponsor's income (which the Secretary of State does not dispute is adequate to meet the Rules) and his failure to satisfy the specific provisions of the Rules.
4. I find that the judge has erred in law. I say that for the following reasons. This is not a case where the operation of the Immigration Rules has given rise to any unfairness or arbitrary consequence. Most significantly, the provisions of the Rules should have been known to the appellant who, before he made his application, could have reviewed and altered his domestic financial arrangements in order to be able to comply with the Rules. For reasons that are not clear, he chose not to do so. I cannot see why an applicant in such circumstances and in full knowledge that he could not meet the requirements, should expect either the ECO or the Tribunal to use Article 8 ECHR to assist him where he has chosen not to help himself. Judge Atkinson was wrong to embark on an Article 8 assessment on the basis that the appellant's circumstances were "not recognised by the Rules"; the circumstances justifying such a course of action simply did not exist in this case. The appellant's circumstances were "not recognised by the Rules" because of the appellant's own failures and omissions. Further, this is not simply a case, as Mr Hussain suggested, of "box ticking". I can identify nothing in the papers which

would indicate that the sponsor's mother is obliged in law to account to the sponsor for the Carer's Allowance paid into her account. The requirement in the Rules that the sponsor should be able to prove his income was simply not met. I therefore set aside the determination and remake the decision, dismissing the appeal on all grounds. The appellant may wish to make a further application, ensuring this time that the Rules may be complied with. However, that is a matter for her and her advisers.

**DECISION**

5. The determination of the First-tier Tribunal promulgation on 24 June 2014 is set aside. I remake the decision. The appeal is dismissed under the Immigration Rules. The appeal is dismissed on human rights grounds (Article 8 ECHR).

Signed

Date 10 September 2014

Upper Tribunal Judge Clive Lane