



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

Appeal Number: VA/23745/2012

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 26 June 2013**

**Sent on:  
On 28 June 2013**

**Before  
UPPER TRIBUNAL JUDGE STOREY**

**Between**

**MR MUHAMMAD HAROON AHMADZAI**

Appellant

**and**

**ENTRY CLEARANCE OFFICEFR, ABU DHABI**

Respondent

Representation

For the appellant: Sponsor, Mr Faridan Ahmadzhai

For the respondent: Mr I Jarvis, Home Office Presenting Officer

**DETERMINATION AND REASONS**

1. The appellant is a citizen of Afghanistan who resides in Pakistan. On 31 May 2012 the respondent refused his application for entry clearance to undertake a family visit to his brother, Mr Faridan Ahmadzhai. The appellant's appeal came before First-tier Tribunal Judge Lingam on 19 March 2013 and she promulgated a determination dismissing it on 11 April. Her sole reason for dismissing the appeal was that she understood the sponsor in the course of his oral

testimony to have said that he was the appellant's cousin/brother in law, not his brother. The grounds of appeal contended that the sponsor had never said his relationship with the appellant was anything other than brother and that the judge must have confused the sponsor with another witness, Mr Ghazi Hassan, who was the appellant's brother in law and cousin.

2. At the hearing Mr Jarvis informed the Tribunal that the note left on file from the Presenting Officer at the First-tier Tribunal hearing, Ms Fleming, noted nothing to suggest the sponsor was other than the brother and also recorded that there were two witnesses and that she considered the sponsor had given a credible account. I informed the parties that the judge's record of proceedings was not entirely clear as to whether more than one person gave oral evidence but it did appear that there were two quite separate testimonies although the first had no name by it and the second had the name of the sponsor.
3. Having discussed the matter with the parties I am satisfied that: (i) at the First-tier Tribunal hearing both the sponsor and Mr Hassan gave evidence in that order; (ii) at the hearing the respondent raised no issue as to the family relationship and that the Presenting Officer's note says nothing to suggest that the family relationship was other than brother-brother; and (iii) (whether as a result of not writing the decision up soon after the hearing or some other reason) the judge confused the record of the sponsor's and Mr Hassan's evidence. That being the case her determination was vitiated by legal error based on a misapprehension of material fact and it is necessary to set it aside.
4. As to the decision I must now re-make, Mr Jarvis said that given the note made by the Presenting Officer at the previous hearing - that she considered the sponsor had given credible evidence - he did not seek to oppose the appellant's appeal being allowed.
5. The principal reason given by the respondent for considering that the appellant did not meet the requirements of the Immigration Rules relating to family visitors was that the evidence he had produced did not show that his financial situation was viable. Particular concern was expressed about the appellant's reliance on bank statements for an account in the name of his business partner. The Entry Clearance Manager said that in, light of this fact, "these funds cannot be considered as being available to [the appellant]". The ECM also noted the lack of sufficient evidence to show that the appellant had a monthly income of PKR 198,000 (which included income from property). In his grounds of appeal it was pointed out that because he was not a national of Pakistan the appellant had not been able to open a business bank account in his own name but had instead managed to get his business partner to swear an affidavit confirming the appellant's financial viability. The affidavit dated 14 May 2012 from Muhammad Tariq, his business partner, written on Nirala Enterprises

headed notepaper, stated that the appellant had deposited R650,000 into his business bank account for his UK trip as trust money “and I will reimburse the said amount instantly on his request”. At the hearing, when asked about this, the sponsor had confirmed these details, observing that the appellant used Mr Mehmood’s bank account to move his money around. He said he would ensure the appellant departed the UK upon completion of his family visit.

6. In light of the respondent’s concession regarding the credibility of the sponsor and taking this evidence together with the documentary materials submitted, I am satisfied that at the date of decision the appellant had shown that he did have available the sum mentioned by Mr Tariq and had shown that his financial situation was viable and that his visit to the UK would be self-financing. I am also satisfied that the appellant had shown he could meet the cost of his onward and return journey and that there would be adequate accommodation and maintenance for him whilst he was in the UK on a family visit. I consider that in the light of the sponsor’s undertaking to ensure the appellant would leave at the end of the family visit there is no issue as to intention.

7. For the above reasons:

The First-tier Tribunal judge erred in law and her decision is to be set aside.

The decision I re-make is to allow the appellant’s appeal.

Signed

Date:

Judge of the Upper Tribunal