Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: OA/03196/2013**

THE IMMIGRATION ACTS

Heard at Field House	**Determination promulgated**
On 27 June 2014	**On 01 September 2014**

Before

Deputy Judge of the Upper Tribunal I. A. Lewis

Between

Entry Clearance Officer,
Islamabad

Appellant

and

Nasir Hussain
(Anonymity direction not made)

Respondent

Representation

For the Appellant:	Ms. J. Isherwood, Home Office Presenting Officer.
For the Respondent:	Mr. G. Duncan of Counsel instructed by NC Brothers & Co..

DETERMINATION AND REASONS

1. This is an appeal against the decision of First-tier Tribunal Judge Murray promulgated on 26 March 2014, allowing Mr Hussain's appeal against the decision of the Entry Clearance Officer ('ECO') dated 15 December 2012 to refuse entry clearance as the fiancé of Ms Kiran Iqbal ('the sponsor').

2. Although before me the ECO is the appellant and Mr Hussain is the respondent, for the sake of consistency with the proceedings before the First-tier Tribunal I shall hereafter refer to Mr Hussain as the Appellant and the ECO as the Respondent.

Background

3. The Appellant is a national of Pakistan born on 3 June 1990. On 2 July 2012 the Appellant applied for entry clearance as the fiancé of the sponsor: see further below in respect of the history of their relationship. The application was refused for reasons set out in a Notice of Immigration Decision dated 15 December 2012 with reference to paragraphs 290(i), (ii) and (iii) of the Immigration Rules.

4. The Appellant appealed to the IAC. The sponsor gave oral evidence in support of the appeal. The First-tier Tribunal Judge allowed the Appellant's appeal for reasons set out in his determination.

5. The Respondent sought permission to appeal raising a challenge to Judge Murray's approach to paragraph 290(ii) (although wrongly specifying 281(ii)). Permission was granted by First-tier Tribunal Judge Grimmett on 13 May 2014.

Consideration

6. In a clear and well set out determination the First-tier Tribunal Judge identified the Respondent's decision, and the reasons for the decision (paragraphs 1 and 2,) the available documents (paragraph 3), the relevant Immigration Rules, the statutory basis of the appeal, and the burden and standard of proof (paragraphs 5-7), before summarising details of the hearing, including oral evidence and submissions (paragraphs 8-12), and then proceeding to set out his findings with reasons (paragraphs 13-18).

7. At paragraph 18 the Judge stated conclusions favourable to the Appellant in respect of each of the requirements of paragraph 290 disputed by the Respondent. As noted above, it is only in respect of the requirement of paragraph 290(ii) that the Respondent seeks to challenge the decision.

8. Under paragraph 290(ii) it is a requirement that "*the parties to the proposed marriage or civil partnership have met*".

9. The Respondent had not been satisfied in this regard because of a confusion apparent on the face of the visa application form, wherein at question 105 it was indicated that the Appellant had first met the sponsor on 3 July 2007, whereas at question 109 it was indicated that the Appellant had last seen the sponsor on 12 August 2000; moreover, the evidence of the sponsor's passport only indicated a visit to Pakistan in 2000.

10. On appeal it was explained that the Appellant and sponsor had met in 2000 when the sponsor had visited Pakistan with her mother to see family members. The sponsor was 10 years old at that time, as would have been the Appellant. They stayed in touch by telephone after that. In 2007 the Appellant's father had spoken to the sponsor's father with a view to arranging a marriage between the Appellant and sponsor; the Appellant and sponsor had thereafter communicated with each other by telephone and by Skype. (See determination at paragraphs 8-10).

11. The Respondent's representative before the First-tier Tribunal disputed that the nature of the contacts between the Appellant and the sponsor amounted to 'having met' for the purposes of paragraph 290(ii): determination at paragraphs 10 and 12. The wording of the 'Respondent's Guidance' was relied upon. The Respondent's representative indicated that the guidance was derived from case law (paragraph 12) – although no case law was produced before the Judge.

12. The Judge addressed his mind to the respective submissions of the representatives, referred to the Respondent's guidance, made relevant findings of primary fact, and against such an analysis determined that he was satisfied on a balance of probabilities that the Appellant and sponsor had met within the meaning of the Rules: see determination at paragraphs 14–15 and 18.

13. The Respondent now seeks to challenge the Judge's analysis citing the cases of **Raj [1985] Imm AR 151** and **Meharban [1989] Imm AR 57**.

14. The decisions in each of the cited cases are necessarily fact sensitive. The decisions also significantly predate the use of means of communication such as Skype, wherein it is readily possible to maintain an acquaintanceship following a physical meeting. (It is unnecessary for present purposes for me to engage with the issue of whether contact only through the Internet could constitute 'a meeting', or whether a physical meeting would be required.) However, some general principles may be distilled from the case law – which I explore in the context of the Respondent's submissions.

15. The Respondent relies upon **Raj** for the proposition that the parties to the proposed marriage should have "*made one another's acquaintances*", and as such the meeting of infants as young as 3 or 4 would not satisfy the requirements of the Rules. I do not consider that anything in the determination of Judge Murray falls foul of that proposition. The Judge found that the Appellant and sponsor had met and spent two weeks together at the age of 10, and had subsequently corresponded. Implicit is that they had made each other's acquaintances.

16. The case of **Meharban** applies the notion of acquaintanceship, it not being disputed that there had been a physical meeting of the parties when 9 or 10 and 7 or 8 respectively. On the facts of that particular case, when the applicant was interviewed he could not recall whether he had ever spoken to the sponsor as they were so young. The Tribunal "*rejected the argument that a mutual citing was enough to satisfy the requirements*". Something more was required than a "*mere coming face-to-face followed by telephone or written contact*". The Tribunal concluded "*there is no requirement that the parties should have met in the context of marriage or marriage arrangements. However, the requirement that they should have met is a requirement which relates to the claim to enter this country in order to get married, and therefore, it is clearly related to the marriage. We think it should be interpreted as requiring at least an appreciation by each party of the other in the sense of, for example, appearance or personality*".

17. Again, it seems to me that there is nothing overt in the reasoning of Judge Murray that falls foul of the guidance to be derived from **Meharban**. Moreover the Skype contact since 2007 would have provided a further appreciation of appearance and personality following on from the time spent together as 10 year olds.

18. I note that Judge Murray referred to the Respondent's guidance as summarising the case law: "*the meeting need not be in the context of marriage… If the parties were childhood friends, the meeting may be acceptable, but a meeting of infants would not be*". A copy of the relevant guidance is on file: the Judge's summary is accurate, and in turn the guidance is a fair reflection of the case law now cited by the Respondent. As regards an Internet relationship, the Respondent's guidance asserts that such a relationship without a face-to-face meeting would not satisfy the requirements – but on the facts that is not the situation here.

19. In all such circumstances I detect no error of law in the approach taken by the First-tier Tribunal Judge herein. He has adequately directed himself to the relevant principles and applied those principles to his primary findings of fact, and has reached a sustainable conclusion based on such analysis.

20. I reject the Respondent's challenge to the decision accordingly.

Decision

21. The decision of the First-tier Tribunal Judge contained no error of law and stands.

22. The appeal of Mr Hussain remains allowed.

Deputy Judge of the Upper Tribunal I. A. Lewis 28 August 2014