



Upper Tribunal  
(Immigration and Asylum Chamber)  
OA/04090/2013

Appeal Number:

**THE IMMIGRATION ACTS**

Heard at: Manchester  
On: 7<sup>th</sup> July 2014

Determination Promulgated  
On 9<sup>th</sup> July 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE BRUCE

Between

Entry Clearance Officer, Islamabad

Appellant

and

Gohar Ayub  
(no anonymity order made)

Respondent

For the Appellant: Ms Johnstone, Senior Home Office Presenting Officer  
For the Respondent: Mr Thornhill, Thornhills Solicitors

**DETERMINATION AND REASONS**

1. The Respondent is a national of Pakistan date of birth 22<sup>nd</sup> February 1989. On the 20<sup>th</sup> February 2014 the First-tier Tribunal (Judge De Haney) allowed his appeal against the Entry Clearance Officer's decision to refuse to grant him entry clearance as the spouse of a person present and settled in the United Kingdom. The Entry Clearance Officer (ECO) now has permission to appeal against that decision.

## **Background and Matters in Issue**

2. The Respondent's Sponsor in the United Kingdom is his wife Zeenat Bibi Ahmad. They had met in the UK when the Respondent was living here as a student. They had travelled to Pakistan together where they had got married. The Respondent then made an application to enable him to travel back to the UK with his wife.
3. The notice of refusal is dated the 21<sup>st</sup> December 2012. It was dealt with under paragraph 281 of the Rules. The ECO noted that payslips had been provided for Ms Ahmad but these were not considered to be satisfactory evidence of her income. No evidence had been supplied to show that the Respondent could reasonably expect to find employment in the UK. He was therefore refused on maintenance grounds. In respect of accommodation it was said that the couple would reside at the sponsor's mother's house, but no evidence of this had been provided. Finally the ECO was not satisfied that this was a genuine and subsisting marriage and that the parties intended to live permanently with the other.
4. On appeal Judge De Haney heard oral evidence from the Sponsor, the Sponsor's father and uncle. He found all three to be credible witnesses. He made clear findings that this was a genuine relationship and there is no challenge to those findings. In respect of accommodation he noted the evidence that the VAF had been completed on the basis that the couple would live at the Sponsor's mother's address. By the time of the decision the couple had received an offer of accommodation from the Sponsor's father; notwithstanding that this was not communicated to the ECO Judge De Haney found it to be circumstances appertaining at the time of decision and found the burden of proof discharged. In respect of maintenance the determination sets out the evidence that at the time that the VAF was completed the Sponsor was employed in a jewellery shop in Manchester. However by the date of decision she was living with her husband in Pakistan and had lost her job. Judge De Haney nevertheless accepted the evidence before him that by the date of decision the Respondent had been offered employment in the UK by the Sponsor's uncle. He found this to be a genuine offer of employment and allowed the appeal on the basis that the parties would be adequately maintained.

## **Error of Law**

5. The grounds of appeal are that Judge De Haney erred in taking into account post-decision evidence in respect of maintenance and accommodation; further that he erred in accepting the oral evidence without documentary evidence to corroborate it. Before me Ms Johnstone elaborated those grounds to submit that the Judge was not entitled to take into account evidence that was not before the ECO at the date of decision. In respect of accommodation the Judge had failed to make findings about whether the third-party offer was durable and realistic. She further submitted that the determination was flawed for failure to set out the relevant figures in respect of maintenance, and whether the claimed projected earnings were sufficient to meet the threshold of adequacy set out in KA (Pakistan) [2006] UKAIT 00065.
6. The grounds of appeal are misconceived. I deal first of all with the point about post-decision evidence. It is not the case that the Tribunal is only entitled to take into account evidence that was before the ECO. Section 85A(2) of the Nationality, Immigration and Asylum Act 2002 provides that in an appeal against a refusal of entry clearance the Tribunal “may consider only the circumstances appertaining at the time of the decision”. As DR (Morocco)\* [2005] UKIAT 00038 makes clear, this can include evidence which existed before the decision but was not before the ECO, as well as evidence which post-dates the decision but can be relied upon to establish circumstances as they stood on that day. The evidence before the First-tier Tribunal was credible oral evidence that the Sponsor’s father and uncle had met with her and her husband in Pakistan before the decision and had made these offers. The evidence of all three witnesses had been tested in cross-examination by Judge De Haney who had found them to be entirely credible. He was entitled to rely upon it because it went to circumstances appertaining at the date of decision.
7. The grounds of appeal assert that there was “a complete lack of evidence of accommodation and employment at the date of decision”. That is not true. Judge De Haney had heard credible oral evidence from three witnesses that at the date of decision on the 21<sup>st</sup> December 2012 the Sponsor’s father had already offered accommodation at his home and that the Sponsor’s uncle had already offered the Respondent a job. Judge De Haney was entitled to place weight on that evidence. As Mr Thornhill points out, there was in fact some documentary evidence in respect of the accommodation in that there was a housing report and a Land Registry entry showing the property to be unencumbered by any mortgage or charge. The fact that these reports post-dated the decision was irrelevant since they related to the property that was the subject of the offer before the decision was made. It is not an error of law to believe witnesses.
8. Ms Johnstone raised two new issues that were not set out in the grounds of appeal. These had more merit. The first was that the Judge did not specifically direct himself to what might constitute “adequate” in respect of maintenance. He had been given a copy of KA and the relevant income support thresholds. It is right to say that the determination does not refer to these matters but I am not satisfied that this is an error such that the decision should be set aside. That is

because it is clear from the witness statement of Mr Abdul Latif, the Sponsor's uncle that the job offer was for 35 hours work per week at £6.19 per hour. That amounts to over £226 per week, in excess of the amount that the parties would have received on income support even if one took into account the Sponsor's then as yet unborn child. They therefore exceeded the KA threshold.

9. Ms Johnstone's second point related to the offer of third-party support made by the Sponsor's father Khalid Mahmood Ahmad. She submitted that the Tribunal had failed to make findings on how realistic that offer was, and in particular whether it would be sustained for the duration of the Respondent's 'probationary period'. Again, any omission in this regard is not such that the decision should be set aside. That is because the evidence established that the offer was stable. Mr Ahmad had given credible oral evidence that he was happy to accommodate his daughter and son-in-law in his three bedroomed house; the Land Registry confirmed that he owned the property outright and there was a property inspection report stating that he was the only other occupant. That was enough evidence for Judge De Haney to be satisfied as to this third-party offer of accommodation: Mahad and Ors v ECOs (2009) UKSC 16, AB (Third-party provision of accommodation) [2008] UKAIT 00018.

## Decision

10. The decision of the First-tier Tribunal contains no error of law and it is upheld.

Deputy Upper Tribunal Judge Bruce  
7<sup>th</sup> July 2014