



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

Appeal Numbers: OA/04213/2013
OA/04217/2013

THE IMMIGRATION ACTS

**Heard at Field House
On 2 July 2014**

**Determination
Promulgated
On 28th July 2014**

Before

**THE HONOURABLE MR JUSTICE HADDON-CAVE
UPPER TRIBUNAL JUDGE GLEESON**

Between

**The Entry Clearance Officer
Cairo**

Appellants

and

**NSREN SAMEER HASSAN ALY
MASTER AHMED WAEL AHMED OMAR**

Respondent

Representation:

For the Appellants: Miss S Vidyadharan, Home Office Presenting Officer
For the Respondent: Not represented

DETERMINATION AND REASONS

1. This is an appeal by the Secretary of State against a decision of Judge Drabu promulgated on 24 March 2014 whereby the judge allowed appeals by Mrs Aly and Master Omar against a decision of the Entry Clearance Officer ("ECO") in Cairo refusing them entry clearance as the wife and son

of Mr Wael Ahmed, who is present and settled in the UK and is a British citizen. For convenience, the appellants below are here referred to as the claimant or claimants, and the respondent as the Entry Clearance Officer.

2. The reason given for the ECO's refusal was that the documents submitted with the application for entry clearance were deficient and did not comply with the Rules. The deficiencies identified were (a) the principal claimant had not provided six bank statements as required by the Rules but only three; and (b) she had not provided her husband's employment contract but merely a letter of employment and his payslips. These were the only grounds for refusal. The bona fides of the marriage were not challenged nor any other issues raised, for instance on accommodation.
3. At the hearing, it was apparent that the appellants filed a considerable number of documents with the notice of appeal. The judge recorded this in his judgment:
 - “4. At the hearing I asked for view on the appellant's bundle of documents from Miss Dias. Her candid answer was that she was not in a position to challenge any of the evidence that had been presented and which showed that all the requirements under the Rules had been met. In the circumstances I did not need to call upon Mr Iqbal to make any submissions, as I was satisfied that the decision of the respondent was unsustainable. The sponsor had produced evidence of his employment in the UK since 2005 and this evidence had been sent to the respondent with the notice of appeal. Also sent was his P60 for 2011-2012, payslips from April 2012 until December 2012 and copies of his bank account statements for a one year period - January 2012 to December 2012.”
4. In her helpful submissions for the Secretary of State, Miss Vidyadharan has made a simple point which goes to the heart of this appeal, namely that the Rules are the Rules and notwithstanding the concession that was incorrectly made on behalf of the Secretary of State at first instance, it was plain that these appellants had failed to lodge the correct documentation when making their entry clearance application. The concession that was made below by Miss Dias (recorded in paragraph 4 of the Determination and Reasons and recited above) plainly, Miss Vidyadharan says, should not have been made. The mere fact that documents were produced and appended to the notice of appeal which may have fulfilled the entry clearance documentary requirements did not, and could not, cure the original defect that the ECO was faced with. She further submitted that the judge should not have accepted the concession that was made by Miss Dias in the light of the clear breach of the clear non-fulfilment of the Rules. We agree.
5. It was unfortunate that the judge found himself in the position of a concession being made on behalf of the ECO that all of the requirements of the Rules had been met when it was quite clear that they had not been. It was, in our judgment, incumbent upon the judge to apply the law and not to rely on a manifestly incorrect admission about it.

6. We are, in these circumstances, in our judgment, bound to set aside and remake the decision. We do so and dismiss the appeal by Mrs Aly and Master Omar against the decision of the ECO in Cairo on the grounds that the documents produced did not fulfil the entry clearance requirements.
7. We would finally observe that there is no reason why the appellants should not lodge a fresh application with the requisite documents if so advised.

Signed

Date 24th July 2014

Mr Justice Haddon-Cave