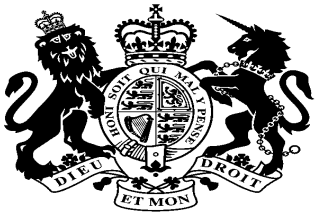

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: OA/04267/2013

THE IMMIGRATION ACTS

Heard at Glasgow	**Determination promulgated**
on 16th June 2014	**on 20th June 2014**

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

ENTRY CLEARANCE OFFICER, ISLAMABAD

Appellant

and

ZAHID HUSSAIN

Respondent

For the Appellant: Mr A Mullen, Senior Presenting Officer
For the Respondent: Mr R A Khan of RH & Co Solicitors

No anonymity order requested or made

DETERMINATION AND REASONS

1. This determination refers to parties as they were in the First-tier Tribunal.

2. The ECO appeals against a determination by First-tier Tribunal Judge Wallace, promulgated on 12th February 2014, allowing the Appellant's appeal against refusal of entry clearance as a spouse.

3. Grounds of Appeal (a) and (c) are directed against the judge's conclusion that the marriage between the Appellant and Sponsor is a subsisting one in which they intend to live permanently together in the UK. However, the grant of permission indicated that those grounds were not promising, and Mr Mullen (rightly, in my view) did not insist upon them.

4. Ground (b) is this:

> Looking at the Appellant's circumstances, it appears that he is unable to meet the maintenance requirements of the Rule … the Sponsor was earning only £210 a week and there is a lack of satisfactory documentary evidence to substantiate the claimed job offer. The judge has failed to properly establish why it is accepted that the maintenance requirements of the Rules are met.

5. Mr Mullen submitted as follows. The judge reached no properly reasoned conclusion that the Appellant would have such earnings as to maintain and accommodate the parties without recourse to public funds. The Sponsor's income is from benefits [not earnings, as suggested by the wording of the grounds], and any earnings of the Appellant would result in a corresponding reduction. Without clear evidence of the earnings the Appellant was likely to have in the UK, it could not be shown that he and the Sponsor and their three children would have an income above the benefits level, which was something over £200 per week. There was evidence of possible employment but that post-dated the decision and so was irrelevant, and in any event it was not a specific offer and did not specify the number of hours or the hourly rate. It was accepted that there was evidence that while in the UK previously the Appellant worked 58 hours per week at £6.35 per hour.

6. Mr Khan's submissions were these. The items submitted by the Appellant to support his application to the ECO included items 8 and 9 of a schedule. The schedule but not the items themselves were copied by the Respondent in the bundle provided to the First-tier Tribunal. The Appellant through his agents requested copies, but these had never been supplied, and the Appellant and Sponsor had not kept copies of the originals. That is shy new evidence of the job offer was put in. The test was whether there would be *additional* recourse to public funds. The judge gave adequate reasons for concluding that such would not be the case. There were elements of third party support, even if only of a helping and not of a legally obligatory nature, but it came from close family members, and so could be relied upon. The Appellant had shown ability to secure a job because he had a good history of employment when in the UK, and he had presented an offer of employment if he returned. Even if the case had not succeeded on maintenance grounds, it should have been allowed in terms of Article 8 of the ECHR, including the best interests of the two children in the UK, taken along with absence of any adverse immigration history, a subsisting marriage, and a network of family relationships.

7. Mr Mullen in response said that he could not fairly argue that the employer's letter indicating a possibility of future employment should be left out of account, given that it appeared to be the Respondent's responsibility that the original evidence was not before the First-tier Tribunal. He submitted that it was an offer too vague to support the judge's conclusion on maintenance. As to Article 8, the Appellant had not been bound to leave the UK (while estranged from his wife). He could have applied to remain here, or to return for contact with the children. The appeal should

have been dismissed under the Immigration Rules, and there was no basis for allowing it under the ECHR.

8. I reserved my determination.

9. The judge had to decide the issue of maintenance. She rightly thought that the offers of family financial support were genuine, but that they were not such as to enable the appeal to succeed on the basis of third party support. At paragraph 50 she gave her reasons - the Appellant had received offers of employment, and he had been in employment when previously in the UK. She was entitled to conclude that it was more likely than not that he would secure similar employment if he returned. The figures relating to that past employment were enough to take the family above income support levels. The judge's reasoning is not detailed or elaborate, but it is sufficient to support the conclusion reached.

10. Whether there was enough in the case to succeed under Article 8 outwith the Immigration Rules is doubtful; but that is immaterial.

11. The determination of the First-tier Tribunal shall stand.

18 June 2014
Judge of the Upper Tribunal