



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: OA/21245/2012

THE IMMIGRATION ACTS

Heard at Glasgow  
on 14 July 2014

Determination promulgated  
on 16 July 2014

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

LAILOMA KHAN

Appellant

and

ENTRY CLEARANCE OFFICER, ISLAMABAD

Respondent

For the Appellant: Mr T D Ruddy, of Jain, Neil & Ruddy, Solicitors  
For the Respondent: Mrs S Saddiq, Senior Home Office Presenting Officer

No anonymity order requested or made

DETERMINATION AND REASONS

- 1) The appellant appeals against a determination by First-tier Tribunal Judge Scobbie, promulgated on 3 March 2014, dismissing her appeal against refusal of entry clearance as the spouse of a recognised refugee in the UK. It was acknowledged that the case could not succeed under the Immigration Rules, because the marriage was not legally complete until after the sponsor left Afghanistan. The case was argued on the basis of compelling and compassionate circumstances outwith the Rules. The judge did not find that such circumstances existed.
- 2) The appellant and sponsor are both Afghan citizens. It is common ground that since the sponsor was granted refugee status, they have completed their marriage and have spent significant periods of time together in Pakistan.

- 3) The grounds of appeal and submissions were along the following lines. Firstly, issue was taken with the findings that the appellant lives in Pakistan, and that there is no reason why the appellant and sponsor could not live together there. The judge incorrectly concluded that the appellant lives in Pakistan, when she has been there only as a visitor. The matter of the Pakistani address given in the application form was dealt with by the sponsor's evidence during the hearing. The judge did not give fair notice of his findings, and had no evidence to justify his conclusions. He overlooked the submission that neither appellant nor sponsor has any rights of residence in Pakistan. In stating that the sponsor could afford to go to Pakistan "... *occasionally, I would imagine*" (¶24) he made an unjustified assumption. Mr Ruddy said that the overall sense of the evidence was that the appellant and sponsor stayed (temporarily) with relatives resident in Pakistan. His fundamental point was that neither of them appeared to have any right of residence there. The appeal should have been allowed.
- 4) Mrs Saddiq submitted that the judge was entitled to conclude from the evidence that the appellant did live in Pakistan, which was her stated address in her visa application form. The findings were all justified by the information from the appellant and by the sponsor's evidence. The matter of the address in Pakistan was specifically addressed during the oral evidence and in submissions. There was no error of law, and the determination should stand.
- 5) The visa application form at Item 3.1 asks for the applicant's full residential address and postal code. The appellant supplies an address in Peshawar, Pakistan (although I note it is a "care of" address.) Item 3.2 asks how long she has lived there, to which she replies, "*For long time*".
- 6) In course of submissions the following matters emerged from the notes of proceedings kept on both sides in the First-tier Tribunal. Neither side suggested that there is any error in those records.
- 7) Mr Ruddy acknowledged that the sponsor was asked in cross-examination about the address on the form. His record of the reply was, "*It was probably because of my second visit, when I stayed there for 6 months*".
- 8) Mrs Saddiq advised me from the note kept by her colleague that when the sponsor was asked about the appellant's address, he replied, "*She meets me in Pakistan*".
- 9) It further emerged from Mr Ruddy's note that the sponsor was asked about the appellant having said she had lived at the Pakistan address "for long time", and he replied, "*We have other family who live in Pakistan*".
- 10) I do not find there to be anything in the ground based on the judge failing to give fair notice of the issues concerning him. Issues about the appellant's address and residence were plainly live. It is not suggested that there is any further evidence or argument which she was denied a fair opportunity of placing before the FtT.

- 11) The phrase "*I would imagine*" suggests speculation and assumption, but that is to lift it out of context. The fact is that the sponsor in the course of a few years made several lengthy visits to Pakistan. The conclusion that he is likely to continue to do so is hardly speculative. Rather, it seems to be a very probable forecast.
- 12) The judge at ¶21 noted the submission that there was no evidence that the parties could live together in Pakistan. I see nothing wrong in his observation that he was "*not so sure about this.*" On any view, the evidence showed at least some scope for living together in Pakistan. The observation at that stage was tentative.
- 13) The conclusion on the balance of probabilities at ¶23 that the appellant in fact does live in Pakistan is based on her giving her address there and saying she has stayed there for a long time. Although there was some evidence from the sponsor pointing the other way, that appears to me to be a conclusion open to the judge for the reasons given. The conclusion that the sponsor could visit Pakistan at least occasionally was also well within the scope of the judge. Any other conclusion would be difficult to reach.
- 14) At ¶26 the judge said it was "*open to the [sponsor] to go to Pakistan if he wishes and it is possible that some form of work could be arranged there*". Matters are more finely balanced over that conclusion. The judge is not entirely clear whether it is determinative, or only an alternative basis of decision. The determination suggests that he thought his overall conclusion justified even on the basis of ongoing visits. Article 8 is not a guarantee of a couple's right to live together permanently, in any country, irrespective of the Rules. The point about longer term residence together in Pakistan should not be assumed to be decisive. The judge supports his conclusion about longer term residence by the sponsor himself seeing no good reason why he might not do so and by his having a relative (or relatives) living there. The evidence was of substantial connection with relatives living permanently in Pakistan. On this point also, I think the conclusion reached was open to the judge and that legally adequate reasons are given. I am also of the view that it was not crucial to the final judgement on proportionality.
- 15) The determination of the First-tier Tribunal shall stand.



15 July 2014  
Judge of the Upper Tribunal