



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

Appeal Number: OA/23797/2012

THE IMMIGRATION ACTS

Heard at Birmingham

On 9 June 2014

Determination

Promulgated

On 10 June 2014

Before

UPPER TRIBUNAL JUDGE PITT

Between

ENTRY CLEARANCE OFFICER - ISLAMABAD

and

ZAEGHAM ABBAS

Appellant

Respondent

Representation:

For the Appellant: Mr Hibbs, Senior Home Office Presenting Officer

For the Respondents: Ms Kullar of counsel

DETERMINATION AND REASONS

The Appeal

1. This is an appeal against the determination dated 8 November 2013 of First-tier Tribunal Judge Ford which allowed appellant's appeal against the respondent's decision to refuse entry clearance as a spouse.

2. For the purposes of this appeal I refer to the Entry Clearance Officer as the respondent and to Mr Abbas as the appellant, reflecting their positions before the First-tier Tribunal.
3. The respondent maintains that Judge Ford erred at [30] in finding that the provisions of paragraph 281 (i) (b) (iii) of the Immigration Rules were not in force at the date of the decision and that the appeal should have been refused as the appellant could not meet this requirement of the Rules.
4. Paragraph 281 (i) (b) (iii) states:

(b)(iii) the applicant does not have one or more unspent convictions within the meaning of the Rehabilitation of Offenders Act 1974

5. It is not disputed that the appellant has unspent convictions that would mean that he could not meet paragraph 281 (i) (b) (iii) were it applicable to his appeal.
6. It is also not disputed that the First-tier Tribunal was in error in finding that the provisions of paragraph 281 (i) (b) (iii) were not in force as of the date of the decision.
7. The sole issue before me was whether the appellant's application fell to be considered under paragraph 281 (i) (a) of the Immigration Rules or paragraph 281 (i) (b) and so whether paragraph 281 (i) (b) (iii) was applicable at all, even where it was conceded for the appellant that it was in force at the relevant time.
8. Paragraph 281 (i) (a) (i) and paragraph 281 (i) (b) (i) set out two different sets of circumstances in which someone can apply for entry clearance as a spouse.
9. They are as follows:

281. The requirements to be met by a person seeking leave to enter the United Kingdom with a view to settlement as the spouse or civil partner of a person present and settled in the United Kingdom or who is on the same occasion being admitted for settlement are that:

(i) (a)(i) the applicant is married to or the civil partner of a person present and settled in the United Kingdom or who is on the same occasion being admitted for settlement ...

__ (b)(i) the applicant is married to or the civil partner of a person who has a right of abode in the United Kingdom or indefinite leave to enter or remain in the United Kingdom and is on the same occasion seeking admission to the United Kingdom for the purposes of settlement and the parties were married or formed a civil partnership at least 4 years ago, since which time they have been living together outside the United Kingdom

10. Before me the respondent maintained that the sponsor had right of abode so the application was to be considered under paragraph 281 (i) (b) (i). In turn, this meant that 281 (i) (b) (iii) concerning spent convictions was engaged.
11. I did not agree with the respondent. The sponsor is present and settled in the UK. Paragraph 281 (i) (a) (i) is the appropriate paragraph where that is so. It is not relevant that she is a British national and also has right of abode. The couple are clearly not applying in a situation where the sponsor is living abroad with the appellant and coming to the UK to seek settlement as in 281 (i) (b) (i).
12. The appellant was therefore entitled to have his application considered under 281 (i) (a) (i) and no issue arose as to any unspent convictions. Judge Ford found that he met all of the provisions of paragraph 281 (i) (a) (i) and there is no other challenge before me. No material error arises, therefore.

Decision

16. The decision of the First-tier Tribunal does not disclose an error on a point of law such that it should be set aside and therefore shall stand.

Signed: 
Upper Tribunal Judge Pitt

Date: 9 June 2014