



IAC-PE-SW-V1

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

Appeal Number: VA/00723/2013
& VA/00303/2013

THE IMMIGRATION ACTS

**Heard at Manchester
On 24th September 2014**

**Determination
Promulgated
On 22nd October 2014**

Before

DEPUTY UPPER TRIBUNAL JUDGE MCCLURE

Between

**MR MUHAMMAD FAYYAZ
&
MRS SHAZIA MUBEEN
(NO ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Khan Whitestones Solicitors
For the Respondent: Mr McVeety, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellants, Mr Muhammad Fayyaz, date of birth 10th January 1969 and Mrs Shazia Mubeen date of birth 22nd September 1970, are citizens of Pakistan. Having considered the facts there is no need for an anonymity direction.

2. This is an appeal by the appellants against the determination of First-tier Tribunal Judge McAll promulgated on 6th November 2013, whereby the judge dismissed the appellants' appeals against the decisions of the respondent dated the 13th November 2013 to refuse the appellants entry clearance to the United Kingdom as visitors seeking to visit family members.
3. By decision made on 13th December 2013 permission to appeal to the Upper Tribunal was granted. The matter appears before me to determine in the first instance whether or not there was a material error of law in the original determination.
4. In granting leave the judge having dismissed all the other grounds gave the following as the grounds for granting permission:-

3 However it is arguable that the First-tier Tribunal Judge applied to a family visit appeal the more exacting standard of proof required in a settlement appeal and that in doing so he made an arguable error of law.
5. The burden of proof in a visit appeal, as in an immigration appeal, is on the appellants. The standard of proof to be applied is the balance of probabilities. There no difference between the standards to be applied.
6. The appellants' representative had to accept that Section 85 and 85A of the 2002 Act applied, such that evidence had to be pertinent to the situation as at the date of the decision. Much of the documentation, upon which reliance was placed, was dated post the date of the decision, as noted by the judge. However such evidence may be taken into account provided that it sheds light on the circumstances pertaining at the date of decision. [see DR (Morocco)2005 UKIAT 00038].
7. The judge, in considering the evidence presented, has noted that the appellants had failed to submit documentation, including tax documents and returns, to substantiate their personal income. Evidence had been disclosed that the first appellant had a business and had employment with certain benefits from the business but no evidence to substantiate his personal income.
8. In submissions before me the appellants' representative sought to give an explanation for the tax documents. Tax documentation as noted by the judge in paragraph 12 raised a number of issues with regard to the appellant's tax being paid.
9. Indeed at pages 122 and 126 documents from the Federal Board of Revenue indicated that the first appellant had no income and no taxable income.
10. Even after explanation there were details on the tax documents which did not appear to be consistent with the explanation and did not substantiate the income of the first appellant. The judge in paragraph 19 has identified that there is a Bank account in respect of Hamtetex Enterprises but that

account does show any income going to the appellant from the account. Whilst the Hamtetex Enterprises account has a credit balance there is nothing to indicate that the credit balance would be available to the appellant to use. Equally the judge noted that at times the balance in the account of Hamtetex would have been insufficient to pay the first appellant his salary at the time it was due.

11. It has to be noted within the determination that the judge has made significant findings to the benefit of the appellant. The judge has however considered the income of the first appellant and was not satisfied that the documentation submitted substantiated that income. The judge was entitled to make the findings that he did with regard to the income of the appellants.
12. Whilst bank accounts had been produced, those related to a business called Hamtex Enterprises and the funds belonged to the company. The judge was entitled to find that there was no evidence that the funds could be used by the appellants.
13. Not being satisfied as to the income of the appellants, the judge had considered the income of the sponsor. Much of the evidence in respect of the income of the sponsor was post the date of decision. The judge had carefully examined that evidence and noted that at the time of the decision the sponsor would at best have only recently started employment and was likely not to have been in the employment at the time of and prior to the decision. The judge was not satisfied that the sponsor was in a financial position to support the appellants whilst the appellants were in the UK.
14. The sponsor lived with his wife and child. The sponsor's wife worked but the income for the lady appeared only to be sufficient to support the sponsor and his family. There was no excess of income over the level required on social security levels to maintain this family.
15. The documentation was considered with care by the judge. The findings of fact made were open to the judge on the evidence submitted. As identified in paragraph 6 the judge has applied the correct standard of proof. In the circumstances the judge was entitled to come to the conclusions that he did and there is no error of law in the determination.
16. There is a no material error of law in the determination. I uphold the decision to dismiss this matter on all grounds.

Signed

Date

Deputy Upper Tribunal Judge McClure

24th September 2014