



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

Appeal Numbers: VA/04174/2013
VA/04177/2013

THE IMMIGRATION ACTS

**Heard at Bradford
On 28th August 2014**

**Determination
Promulgated
On 3rd September 2014**

Before

UPPER TRIBUNAL JUDGE D E TAYLOR

Between

**RAHMAT ULLAH KHAN
WAQARUN NISA**

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: No appearance by the Sponsor
For the Respondent: Mrs R Pettersen, Home Office Presenting Officer

DETERMINATION AND REASONS

1. This is the Appellants' appeal against the decision of Judge Myers made following a hearing at Bradford on 15th April 2014.

Background

2. The Appellants are husband and wife, citizens of Pakistan, born on 5th May 1962 and 3rd March 1968 respectively.
3. They applied to come to the UK as visitors but were refused on 22nd January 2013.
4. The Entry Clearance Officer was not satisfied that the first Appellant's circumstances were as claimed. He had provided affidavits dated 1998 and 2000 which could not demonstrate his current circumstances. The valuation reports were dated 2006 and the copy of his pension book indicated a sum being paid different from the amount claimed. The bank statement showed deposits inconsistent with his claimed income. In particular sums recently deposited equate to over 49 months' declared income from all sources before any living deductions.
5. Additionally, the Entry Clearance Officer was not satisfied that the Sponsor, the first Appellant's brother, was in a position to maintain and accommodate him.
6. The judge was handed evidence at the hearing in relation to a college where the first Appellant had studied in 2009. She took into account that evidence in reaching her decision that the Appellants could not meet the requirements of the Rules.
7. The Appellant challenged her decision; inter alia, on the basis that the judge had taken into account evidence in relation to the college.
8. First-tier Judge Gillespie observed, in granting permission, that the Entry Clearance Officer had not taken any point in relation to the college and the Appellants were given no notice of the evidence and were not in a position to respond.

The Hearing

9. There was no appearance by the Sponsor.
10. Mrs Pettersen acknowledged that the judge may have acted in an unfair manner in taking into account evidence not available to the Appellant. It is clear from the determination that the Sponsor's wife, who attended the hearing, was not in a position to answer any detailed questions about his circumstances. However she submitted that the error was immaterial because the remaining findings in the determination were sustainable.
11. I accept that submission. The Appellant did not have an opportunity to comment on the evidence produced by the Presenting Officer at the hearing. It had not been relied upon by the Entry Clearance Officer and his Sponsor was not in a position to make any submissions on it.
12. However, the judge also dismissed the appeal on the grounds that the Appellant had failed to answer the questions raised by the Entry Clearance Officer in relation to his circumstances in Pakistan. She also noted that

the Sponsor and his family live in modest circumstances and had not provided evidence to show that they could maintain and accommodate the first Appellant and his family.

13. Those were findings plainly open to the judge to make and are untainted by any error.

Decision

14. The judge's decision stands. The Appellants' appeals are dismissed.

Signed

Date

Upper Tribunal Judge Taylor