



IAC-AH-DN-V1

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

Appeal Number: IA/43786/2014

**THE IMMIGRATION ACTS**

**Heard at Bradford  
On 28 September 2015**

**Decision & Reasons Promulgated  
On 16 December 2015**

**Before**

**UPPER TRIBUNAL JUDGE CLIVE LANE**

**Between**

**SOHAIB MAQSOOD  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr Hussain, instructed by Hussain Immigration Law Ltd  
For the Respondent: Mr Diwnycz, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant, Sohaib Maqsood, was born on 15 May 1990 and is a male citizen of Pakistan. He was refused leave to remain in the United Kingdom as the spouse of a person settled here by a decision of the Secretary of State dated 18 October 2014. He appealed to the First-tier Tribunal (Judge Dearden) which, in a decision promulgated on 13 March 2015, dismissed the appeal. The appellant now appeals, with permission, to the Upper Tribunal.

2. The respondent had not been satisfied that the appellant met the suitability requirements for leave to remain as the spouse under Appendix FM (in particular, R-LTRP1.1) because he had sought to rely upon a false English language test certificate. The evidence adduced by the respondent in the appeal relating to the appellant's English language test was only generic; none was specific to this appellant. The judge concluded that the burden of proof (which fell on the respondent) had not been discharged and that it had not been proved that the appellant had colluded with a proxy in taking the test or otherwise to have obtained the false test results.
3. However, having found that the appellant was not disqualified under the suitability requirements, the judge went on to state as follows:

“The appellant therefore has access to EX.1 of Immigration Rules HC 395 as amended. The appellant seeks to show me that he has a genuine and subsisting relationship with a partner within the United Kingdom, is a British citizen, is settled in the UK or in the UK with refugee leave or humanitarian protection and there are insurmountable obstacles to family life with that partner continuing outside the United Kingdom.”

The judge concluded at [31]:

“If the appellant is to show on the balance of probabilities that he has a genuine and subsisting relationship with a partner who is in the United Kingdom one would have expected that partner to have (a) provided a statement and (b) to have attended at court to advocate that statement. There was no statement from the partner and she did not attend at court to give oral evidence to me. Whilst I have copies of her passport and wage slips, and whilst I had the marriage certificate, the appellant has failed to show (the burden on this matter rests upon him on the balance of probabilities) that he is in a genuine and subsisting relationship with a partner who is in the United Kingdom and is a British citizen.”

4. Mr Hussain, for the appellant, submitted that, having found in favour of the appellant as regards the ETS test, the judge should simply have allowed the appeal under the Immigration Rules. He noted that the refusal letter [14] had recorded that,

‘It is considered that your client does not meet the suitability requirements [of Appendix FM]. However, if they did, your client would meet the eligibility requirements for limited leave to remain in the UK as a partner under E-LTRP1.2-1.12 and 2.1 because of his marriage to a British citizen, Ms Usma Kausar. Your client has provided evidence in the form of a certified copy of a marriage certificate dated 25 February 2014 and Ms Kausar's British passport. As a result additional consideration will be given to the criteria of Appendix FM EX.1(b) with regard to EX.2.’
5. Mr Hussain is correct to point out that Judge Dearden was not required to apply the provisions of EX.1 to the appellant. If the appellant met the requirements of E-LTRP together with the suitability requirements (i.e. in this case the language test) then he was not required, in addition, to meet

the requirements of Appendix FM EX.1. However, I am not persuaded that the matter is as simple as Mr Hussain submits. In his Rule 24 letter, Mr Parkinson, Specialist Appeals Team, points out [3] that “The judge was obliged to consider whether all the requirements of the Immigration Rules were met. In that respect the judge followed the Tribunal decision of **RM (Kwok On Tong: HC 395 paragraph 320) India [2006] UKAIT 00039.**” I agree with Mr Parkinson that **Kwok On Tong** remains good law and that, for the judge to have allowed the appeal he would have had to have been satisfied that all the requirements of the relevant Immigration Rule were met. I agree with Mr Hussain that the appellant was not required to meet the requirements of EX.1 but the judge’s findings at [31] (quoted above) as to the genuineness and subsistence of the appellant’s relationship with Ms Kausar are clearly relevant to the substantive requirements of E-LTRP, in particular, sub-paragraph 1.7 (*“the relationship between the applicant and their partner must be genuine and subsisting.”*) It is the case that the refusal letter does not cast doubt upon the genuine and subsisting nature of the relationship but, relying upon **Kwok On Tong**, the judge was required to satisfy himself that the relevant Rule was met in each of its requirements.

6. I acknowledge that the judge may yet have fallen into legal error if, following the hearing, he has fixed upon and determined the appeal by reference to a matter in respect of which the parties were never given the opportunity to adduce evidence or to comment. It is clear, however, from the Record of Proceedings that EX.1 was raised by the representatives and was the subject of a submission by Mr Hussain, a Counsel who has appeared before both Tribunals. The genuineness and subsistence of the relationship are issues in common to EX1 and the substantive rule, E-LTRP. I note also that the appellant had adduced much documentary evidence with a view to proving the subsistence of his relationship to Ms Kausar. I am satisfied that the parties were aware that the genuineness/subsistence was at issue and I am satisfied also that the judge at [31] has reached a finding which has been supported by adequate reasons. In the circumstances, and notwithstanding the fact that he found in the Appellant’s favour as regards the ETS test issue, the judge did not err in law by dismissing the appeal against the immigration decision.

### **Notice of Decision**

This appeal is dismissed.

No anonymity direction is made.

Signed

Date 10 October 2015

Upper Tribunal Judge Clive Lane