



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

Appeal Number: OA/17016/2013

THE IMMIGRATION ACTS

**Heard at Birmingham
On 22 January 2015**

**Decision & Reasons
Promulgated
On 5 February 2015**

Before

UPPER TRIBUNAL JUDGE CLIVE LANE

Between

**NAZMA PARVEEN
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

ENTRY CLEARANCE OFFICER - ISLAMABAD

Respondent

Representation:

For the Appellant: Mr Ahmed
For the Respondent: Mr Smart

DECISION AND REASONS

1. The appellant Nazma Parveen, was born on 21 June 1988 and is a female citizen of Pakistan. The appellant had applied for entry clearance to the United Kingdom as the spouse of Mr Zafaran Ali (hereafter referred to as the sponsor). By a decision of the Entry Clearance Officer Islamabad

dated 24 July 2013, the application was refused. The appellant appealed to the First-tier Tribunal (Judge Andrew) which, in a determination promulgated on 7 August 2014, dismissed the appeal. The appellant now appeals, with permission, to the Upper Tribunal.

2. The ECO refused the appellant's application because he/she had not been satisfied that the appellant was in a genuine and subsisting relationship with the sponsor. Judge Andrew disagreed with the ECO [15] finding that she was satisfied that the couple were married and that they intended to live together as husband and wife. However, Judge Andrew did not allow the appeal for the following reason:

However, I am not able to be satisfied as to the maintenance requirements of the Rules. The reason for this is that Appendix FM-SE states at paragraph A1 2(a)(i) that payslips must cover the six months prior to the date of application. The date of application is 23 March 2013. Even now I do not have payslips for the six months prior to this date, as required by the Rules. The appellant and the sponsor have been professionally advised in relation to this matter and thus should have been aware of the requirements of the Rules.

3. In the notice of refusal, the ECO says this regarding the appellant's application for entry clearance:

In refusing the application no determination has been made as to whether the applicant meets the minimum income and accommodation requirements under Appendices FM and FM-SE of the Rules. However, we have assessed that, regardless of whether the minimum income and accommodation requirements are met, the application falls for refusal under the Rules.

4. Matters are further complicated by the fact that there was not a complete respondent's bundle on the files of the Tribunal or the parties. It is unclear, as a consequence, exactly what information and documents had been before the ECO. The ECM review indicates that he/she had seen eight pages of financial information but it is not clear whether those pages were wage slips or bank statements or other evidence. Mr Smart, for the ECO, submitted that the only documents in the files related to 2012 and not to the six month period prior to the making of the application for entry clearance on 23 March 2013. However, the sponsor told me that he had now duplicates of the bank statements and wage slips for the relevant six month period prior to the making of the application; he had sent the originals to the ECO. I am aware that that evidence (which the sponsor had brought to court) had not been before the First-tier Tribunal Judge; had it been, she would no doubt have said so in her determination. It is also somewhat puzzling that the sponsor has been able to produce this evidence before the Upper Tribunal but did not make it available to the First-tier Tribunal. I am, however, satisfied that the wage slips and bank statements the sponsor has now produced are genuine documents; Mr Smart did not suggest otherwise. The question that remains is whether the sponsor sent, as he claims, all the relevant bank statements and wage slips to the ECO with the application. The First-tier Tribunal did not make

a finding on that specific issue, noting only that copies had not been produced to it. After careful consideration, I am satisfied that the appellant did send the required financial documents for the relevant period to the Entry Clearance Officer with the application. The fact that the sponsor has been able to obtain copies of the same documents, that the documents pre-date the application for entry clearance and that they satisfy the requirements of Appendix FM-SE is, in my opinion, a strong indicator that the sponsor's evidence is truthful. I find that the First-tier Tribunal erred in law. I set aside the First-tier Tribunal's determination and have remade the decision. I admit the duplicate bank statements and wage slips now produced by the sponsor. I find that, had the ECO proceeded to examine the financial evidence, he/she would have concluded that the appellant was able to meet the financial requirements of the Immigration Rules on the basis of the documents sent in support of the application. Given that the only issue on which entry clearance was refused (the subsistence of the relationship) is now subject to a positive finding in the appellant's favour in the First-tier Tribunal (although I have set aside the determination, I preserve that finding) it follows that the appellant's appeal against the ECO's decision should be allowed.

DECISION

The determination of the First-tier Tribunal which was promulgated 7 August 2014 is set aside. I have remade the decision. The appellant's appeal against the ECO's decision dated 24 July 2013 is allowed under the Immigration Rules.

No anonymity direction is made.

Signed

Date 2 February 2015

Upper Tribunal Judge Clive Lane