



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

Appeal Number: OA/02298/2013

THE IMMIGRATION ACTS

Heard at Manchester

**On 1 September 2014
Decision given orally**

**Determination
Promulgated**

On 17 September 2014

Before

UPPER TRIBUNAL JUDGE DAWSON

Between

ENTRY CLEARANCE OFFICER

and

SAKALIMA BEGUM

Appellant

Respondent

Representation:

For the Appellant: Mr A McVeety, Home Office Presenting Officer
For the Respondent: Mr C Timpson instructed by Maya Solicitors

DETERMINATION AND REASONS

1. The appellant has been granted permission to appeal the decision of First-tier Tribunal Judge Lambert who, for reasons given in her determination dated 6 January 2014, allowed the appeal under the Immigration Rules by

the respondent (whom I shall refer to as the claimant) against the Entry Clearance Officer's decision dated 25 November 2012. This was to refuse her entry clearance as the partner of Surukh Miah, a British citizen, the parties having married in Sylhet, Bangladesh on 3 April 2011. The claimant is a national of that country where she was born on 6 September 1988.

2. The Entry Clearance Officer refused the application with reference to the Immigration Rule then in force for married couples, paragraph 281 of HC 395. In particular he did not accept that there would be adequate accommodation for the parties and furthermore that they would be able to adequately maintain themselves as required by paragraph 281(iv) and (v). The Entry Clearance Officer was represented by a Presenting Officer at the hearing of the appeal before the First-tier Tribunal in Manchester on 18 December 2013. She is recorded in the determination as having conceded that there was no issue in relation to maintenance and that the requirement of paragraph 281(v) was met.
3. In respect of accommodation, the judge took account of an accommodation report dated 21 December 2012 in terms that the property in which the sponsor lived had sufficient accommodation for himself and his wife. There was also a Land Registry Office copy showing that the property which is owned by the claimant's mother-in-law is free of mortgage and on that basis the judge accepted that the requirements in paragraph 281(iv) were met. Thus the judge allowed the appeal under the Immigration Rules.
4. The complaint made by the Entry Clearance Officer in his grounds of application relates to the admissibility of the accommodation report with reference to s.85 and 85A of the Nationality, Immigration and Asylum Act 2002. Designated Judge Woodcraft in granting permission to appeal observed that the judge ought to arguably have explained why she admitted the accommodation report which by the time of the Entry Clearance Manager's review had been in existence for eleven months but not produced. He observed that although this was not a points based appeal, some explanation why the report was being admitted was arguably necessary so that the losing party could understand why they had lost.
5. With appropriate candour Mr McVeety acknowledged that according to the Presenting Officer's note, the issue of accommodation had been conceded before Judge Lambert and that she had failed to record this in her determination. Although unable to concede the appeal Mr McVeety explained he did not pursue the grounds.
6. The fact that the Presenting Officer conceded the issue is effectively the end of the Entry Clearance Officer's appeal in the Upper Tribunal. Even if that concession had not been made, it is unarguable that the judge was entitled to have regard to the accommodation report pursuant to Section 85(A) of the 2002 Act since it related to the accommodation that the

claimant referred to in her application when she first made application for entry clearance.

7. Accordingly the appeal by the Entry Clearance Officer in the Upper Tribunal is dismissed and the decision of First-tier Tribunal Judge Lambert stands.

Signed

Date 16 September 2014

A handwritten signature in blue ink, appearing to read "Dawson", with a horizontal line extending to the right.

Upper Tribunal Judge Dawson