



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

OA/08175/2013

Appeal Number

THE IMMIGRATION ACTS

Heard at Sheldon Court
On 2nd July 2014
Prepared 2nd July 2014

Determination Promulgated
On 3rd July 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE PARKES

Between

NOSHEEN SAQUIB
(ANONYMITY DIRECTION NOT MADE)

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

For the Appellant: Mr R Ashan (Solicitor)
For the Respondent: Mr N Smart (Home Office Presenting Officer)

DETERMINATION AND REASONS

1. The Appellant applied for entry clearance to the UK as a spouse which was refused. The Appellant's appeal was heard by First-tier Tribunal Judge Graham on the 29th of November 2013 in Birmingham. The appeal was dismissed in a determination promulgated on the 13th of December 2013.
2. In dismissing the appeal the Judge found that the evidence to show a subsisting relationship was inadequate and phone evidence was rejected. At paragraph 13 the Judge considered the Sponsor's claimed recent trip to Pakistan to see the Appellant, it was pre-decision, and found that he had not provided evidence to show that such a visit had taken place. The appeal was dismissed with the Judge finding that the marriage was not subsisting.
3. The application for permission to appeal to the Upper Tribunal stated that the Tribunal had been served with copies of the Sponsor's passport and flight tickets before the hearing and this was confirmed by the return of those documents by the Tribunal after the hearing. It was an error for the Judge not to have considered them given the findings in paragraph 13.

4. Permission to appeal was granted by First-tier Tribunal Judge De Haney on the 9th of April who noted that the First-tier Tribunal file contained copies of the documents referred to in the application and that it was arguable that the Judge erred in failing to take account of all the evidence before her.
5. The rule 24 response from the Secretary of State assert that the documents were received by the Tribunal after the hearing. In the file that I have there are copies of the passport, with stamps for the early 2013 visit and copies of the flight ticket and documentation, date stamped the 27th of March 2013.
6. It is not clear why the Appellant or his representative did not refer to what was submitted with the Notice and Grounds of Appeal to the First-tier Tribunal nor is it clear how it was overlooked by the Judge. In the circumstances I am bound to find that the determination contains an error of law as it appears that significant relevant evidence was not considered. In the circumstances I will set aside the determination and remit the case to the First-tier Tribunal for re-hearing on all issues.

CONCLUSIONS

The making of the decision of the First-tier Tribunal involved the making of an error on a point of law.

I set aside the decision and remit the case to the First-tier Tribunal for re-hearing on all issues.

Anonymity

The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005 and I make no order.

Fee Award

In remitting the case to the First-tier Tribunal I make no fee award and leave the matter for the First-tier Tribunal to consider.

Signed:

Deputy Judge of the Upper Tribunal (IAC)

Dated: 2nd July 2014