



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

Appeal Number: OA/12474/2013

THE IMMIGRATION ACTS

Heard at Field House

On 9 June 2014

Determination

Promulgated

On 9 June 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE FROMM

Between

THE ENTRY CLEARANCE OFFICER, ISLAMABAD

and

SAIQA TAHIR

(NO ANONYMITY DIRECTION MADE)

Appellant

Respondent

Representation:

For the Appellant: Mr C Avery, Home Office Presenting Officer

For the Respondent: None

DETERMINATION AND REASONS

1. The respondent to this appeal, Ms Tahir, is a citizen of Pakistan born on 8 August 1991. The appellant is the entry clearance officer, who has appealed with the permission of the First-tier Tribunal against a decision of Judge of the First-tier Tribunal Beach, who allowed Ms Tahir's appeal against the refusal of entry clearance to enable her to join her husband, Dr Muhammad Tahir ("the sponsor") in the UK.

2. It is more convenient to refer to the parties as they were before the First-tier Tribunal. I shall therefore refer to Ms Tahir from now on as “the appellant” and the entry clearance officer as “the respondent”.
3. I was not asked and saw no reason to make an anonymity direction.
4. The respondent considered the appellant’s application under the rules for partners found in Appendix FM of the Immigration Rules, HC395. In a decision dated 13 May 2013 the respondent decided the appellant did not meet paragraphs E-ECP.2.6 & 2.10 or E-ECP.2.5 of the rules. The couple said they met and married in August 2012 but there was no evidence of contact since then and no photographs of the wedding. The entry clearance officer was not satisfied the couple’s relationship was genuine and subsisting and that they intended to live together permanently in the UK or even that they had met.
5. In her grounds of appeal, the appellant pointed out the sponsor had made three visits to Pakistan since the marriage and a family registration certificate had been issued. She attached further evidence, such as photographs, records of contact by text message, telephone and email and evidence of her husband’s trips.
6. The sponsor attended the hearing before Judge Beach and gave evidence. The judge found him a credible witness and found as follows:
 - (1) the couple had met because the marriage certificate showed their signatures and the wedding photographs depicted them together;
 - (2) the sponsor had honestly believed the marriage certificate was sufficient evidence of his relationship;
 - (3) he had only realised he needed to keep a record of contact after reading the decision;
 - (4) the couple had spent a considerable period of time together during the sponsor’s visits to Pakistan and on a trip they took together to Abu Dhabi; and
 - (5) the sponsor had used calling cards to telephone the appellant.
7. The judge found the rules were met and allowed the appeal. She did not make a fee award.
8. The respondent filed grounds seeking permission to appeal which argued that, despite directing herself in terms of section 85(5) of the Nationality, Immigration and Asylum Act 2002, the judge had materially erred by admitting as evidence plane tickets, boarding passes and evidence of telephone calls and emails which post-dated the decision. Permission to appeal was granted by Judge Ransley.
9. The sponsor did not attend the appeal hearing. Mr Avery simply relied on the reasons seeking permission to appeal.

10. Notwithstanding the unexplained absence of the sponsor, I decided that the judge did not make a material error of law such that her decision should be set aside and her decision allowing the appeal under the rules shall stand. My reasons are as follows.
11. Section 85(5) of the 2002 Act disapplies the general rule which permits a Tribunal to consider evidence about any matter which it thinks relevant to the substance of the decision. Section 85A(2) provides that in appeals such as this one,

“... the Tribunal may consider only the circumstances appertaining at the time of the decision.”
12. However, that does not mean that post-decision evidence is never relevant in overseas appeals. The former similar provision in section 85(5) was interpreted in *DR (ECO: Post-decision evidence) Morocco* [2005] UKIAT 00038 Starred. For example, in *In Naz (subsisting marriage - standard of proof) Pakistan* [2012] UKUT 00040 (IAC), the Upper Tribunal explained that post-decision visits by a sponsor to his spouse were admissible in evidence to who the marriage was subsisting.
13. I note also that the judge’s main reason for accepting the relationship was genuine and subsisting was that she found the sponsor a credible witness. She accepted his oral evidence in its entirety.
14. In the circumstances, the judge was entitled to rely on the evidence she referred to in reaching her conclusion that the rules were met. Her decision does not disclose any material error of law.

DECISION

The Judge of the First-tier Tribunal did not make a material error on a point of law and her decision allowing the appeal under the Immigration Rules shall stand.

No anonymity direction has been made.

No fee award.

Signed

Date 9 June 2014

**Neil Froom, sitting as a Deputy Judge of
the Upper Tribunal**