



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

Appeal Number: IA/33733/2014

THE IMMIGRATION ACTS

**Heard at Glasgow
on 31 March 2015**

**Determination Promulgated.
on 22 April 2015**

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MUNTAZIR ABBAS

Respondent

Representation:

For the Appellant: Mrs M O'Brien, Senior Home Office Presenting Officer

For the Respondent: No legal representative

DETERMINATION AND REASONS

1. The parties are as described above, but the rest of this determination refers to them as they were in the First-tier Tribunal.
2. The SSHD appeals against a determination by FtT Judge David C Clapham SSC, promulgated on 13 November 2014, allowing under the Immigration Rules the appellant's appeal against refusal of a variation of leave to remain in the UK on the basis of his marriage to a UK citizen.

3. The application to the respondent was refused because of non-production of the evidence specified in the Rules - in particular, paragraph E-LTRP.3.2 in respect of income.
4. It is not in dispute that the specified evidence was not produced, either with the application or at the hearing in the First-tier Tribunal. The appellant sought to make his case good by evidence that his wife's wages were not paid into the bank but in cash. The judge accepted that evidence and allowed the appeal.
5. The SSHD's first ground of appeal is that the Rules require specified evidence of a particular nature, and in the absence of such evidence it was not open to the judge to allow the appeal. Mrs O'Brien relied on that ground, and pointed out a further difficulty. Even if the judge had been entitled to take account of wages paid in cash, the Rules require that such sums are taken at net not gross value. The result would have been that the sum shown was under the minimum threshold.
6. Mr Abbas said that he understood that the requirement was to show wages paid into a bank and to produce the corresponding bank statements. However, in his time in the UK he had come to know many people who work and are paid weekly in cash. They commonly spend the money on living requirements and to pay their bills, and do not lodge it in the bank. There had been evidence from his wife explaining their position. They had been staying with his mother-in-law and his wife had been contributing directly to the household expenses. Her earnings needed to be spent and they had not understood there was any requirement to put them into the bank. They had provided forms P60 and other evidence to show that the income did in fact come to more than the minimum income threshold. If they had known what they needed to do to comply, they would have done it. His wife had also been reluctant to use a bank account because her account had been misused in the past, through no fault of her own. The tribunal could write to the bank to check that such was the position.
7. I reserved my determination.
8. The SSHD's first ground of appeal is well founded. To meet the requirements of the Rules requires production of the specified evidence. This is stated at Appendix FM-SE paragraph A and is built into the whole structure of the Rules. The judge did not explain why he considered himself entitled to find that the requirements of the Rules were met by alternative evidence, such as the oral evidence of the appellant and his wife. There is no provision which enables a judge to do so.
9. The appellant's position on this point may be genuine and easily understandable, but it did not enable him to succeed as a matter of law. As the SSHD observes in the grounds of appeal to the Upper Tribunal, his recourse would be to arrange matters so that he can make an application based on the specified evidence required by the Rules.

10. The SSHD also has what Mrs O'Brien described as a secondary ground of appeal. The appellant and the sponsor gave evidence at the hearing which the Presenting Officer criticised as contradictory and unsatisfactory. Those discrepancies are recorded in the determination. The judge found the sponsor an unimpressive witness. The ground says that the judge failed to give adequate reasons for finding nevertheless that the relationship was a genuine one, pointing out that the only reason given (paragraph 22) is that "the parties appear to be staying with the sponsor's mother."
11. This ground I think is also made out. The judge states the difficulties with the evidence but gives no adequate reason for resolving them in the appellant's favour. However, on the first ground alone the determination has to be reversed.
12. The determination of the First-tier Tribunal is **set aside**. The appeal, as originally brought by the appellant to the First-tier Tribunal, is **dismissed**.



Upper Tribunal Judge Macleman
31 March 2015