



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Numbers: IA/49063/2013

**THE IMMIGRATION ACTS**

Heard at: Manchester  
On: 1<sup>st</sup> July 2014

Determination Promulgated  
On: 10<sup>th</sup> October 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE BRUCE

Between

Zahoor Abbas

Appellant

and

Secretary of State for the Home Department

Respondent

For the Appellant: Mr Patel, KG Solicitors  
For the Respondent: Mr Harrison, Senior Home Office Presenting Officer

**DETERMINATION AND REASONS**

1. The Respondent is a national of Pakistan date of birth 23<sup>rd</sup> June 1989. He appeals with permission<sup>1</sup> the decision of the First-tier Tribunal (Judge Dickenson)<sup>2</sup> to dismiss his appeal against the Respondent's decision to refuse to

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<sup>1</sup> Permission to appeal to the Upper Tribunal granted by First-tier Tribunal Judge Cheales on the 28<sup>th</sup> April 2014.

<sup>2</sup> Determination promulgated on the 11<sup>th</sup> March 2014

vary his leave to remain as an unmarried partner of a person present and settled in the United Kingdom<sup>3</sup>.

2. The first matter in issue was whether the Appellant is in a genuine and subsisting relationship with his sponsor, Ms Sabah Farhat. The Respondent did not accept that this was the case because the Appellant had previously been given leave to enter the UK as the spouse of a Ms Faria Iqbal. He stated that he was not divorced from Ms Iqbal until September 2013 but claims to have been living with Ms Farhat since April of that year. Further the Respondent was not satisfied that the Appellant had passed his English language exam. On appeal to the First-tier Tribunal the Respondent conceded this latter issue but introduced a further ground for refusal, the HOPO on the day contending that the Appellant could not meet the requirements of paragraph E-ELTRP.3.1 in respect of funds.
3. Judge Dickinson accepted that the Appellant and his partner Ms Farhat are in a genuine and subsisting marriage. As to maintenance he correctly directed himself that the Appellant had to show that at the date of decision he and Ms Farhat had a household income of £18,600 per annum. He was not however satisfied that this test was met. At paragraph 16 the determination notes that the Appellant supplied his wage slips, a P60 and his wife's P60 relating to her employment at Al-Islah school, but that this evidence did not show the requisite level of income. The appeal was therefore dismissed.
4. The grounds of appeal are that the Appellant did meet the required threshold and that the determination is flawed for want of reasoning, and/or mistake of fact. It is further submitted that since the issue as to finances was only raised on the day of the hearing the Appellant was not given adequate time to produce the required evidence.

### **Error of Law**

5. At the hearing before me Mr Harrison for the Respondent agreed that this matter had not been raised in the refusal letter and that the Appellant was only put on notice of it at the hearing. If the evidence had been limited that was because the Appellant had not come prepared to deal with the point. I am satisfied that this was a procedural irregularity. It was unfair that the Appellant was not given the chance to present further evidence relating to his finances. There is further a lack of reasoning at paragraph 16 such that the Appellant is not able to understand why he did not succeed. The decision is therefore set aside.

### **The Re-Making**

6. At the hearing before me Mr Harrison and Mr Patel very helpfully took some time to review all of the evidence relating to the household income at the date

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<sup>3</sup> Reasons for refusal letter dated 6<sup>th</sup> November 2013

of decision. It was agreed that as an in-country appeal concerning leave to remain as a partner, the Tribunal is entitled to take into account any evidence establishing matters as they stood at the date of decision. The £18,600 could come from the joint income of both Appellant and Sponsor. It was further agreed that the following evidence did show that the household income exceeded the required amount of £18,600 and that all of the requirements of Appendix FM-SE are met:

- Appellant's non-salaried employment <sup>4</sup> with First 4 Print Ltd. Commenced 12<sup>th</sup> September 2011, still employed there to date. In the 26 weeks prior to the application being made he earned £8274.68 gross. This is demonstrated by wage slips, his P60, bank statements and a handbook issued by his employer explaining the terms and conditions of his employment. This works out to £16,549 per year.
- Sponsor's salaried employment with Al-Islah School. Commenced September 2012, still employed to date. Ms Farhat produced wage slips, bank statements, a letter from her employer and an employer's handbook. This evidence showed her to earn an annual salary of £8925, having received £4559.90 in the 6 months prior to the application being made.

## Decisions

7. The determination of the First-tier Tribunal contains an error of law and it has been set aside.
8. I re-make the decision in the appeal by allowing it.

Deputy Upper Tribunal Judge Bruce  
23<sup>rd</sup> September 2014

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<sup>4</sup> Characterised as such because he is paid an hourly rate and his hours can vary: see October 2013 IDI 'Family members under Appendix FM'.