



IAC-AH-PC-V1

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

Appeal Number: IA/49776/2013

THE IMMIGRATION ACTS

Heard at Bradford

On 16 July 2014

**Determination
Promulgated**

On 21 October 2014

Before

UPPER TRIBUNAL JUDGE CLIVE LANE

Between

NAGINA BIBI

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mrs E Brooksbank, Henry Hyams & Co, Solicitors
For the Respondent: Mrs R Pettersen, a Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant, Nagina Bibi, was born on 25 December 1988 and is a female citizen of Pakistan. On 7 November 2013, a decision was made to refuse the appellant indefinite leave to remain in the United Kingdom as the spouse of a person settled in this country (Yasir Mair, the appellant's husband). The appellant appealed to the First-tier Tribunal (Judge Agnew) which, in a determination promulgated on 19 March 2014, dismissed the

appeal. The appellant now appeals, with permission, to the Upper Tribunal.

2. The appellant was required to satisfy the provisions of paragraph 287 of the Immigration Rules:

287. (a) The requirements for indefinite leave to remain for the spouse or civil partner of a person present and settled in the United Kingdom are that:

(i) (a) the applicant was admitted to the United Kingdom for a period not exceeding 27 months or given an extension of stay for a period of 2 years in accordance with paragraphs 281 to 286 of these Rules and has completed a period of 2 years as the spouse or civil partner of a person present and settled in the United Kingdom; or

__ (b) the applicant was admitted to the United Kingdom for a period not exceeding 27 months or given an extension of stay for a period of 2 years in accordance with paragraphs 295AA to 295F of these Rules and during that period married or formed a civil partnership with the person whom he or she was admitted or granted an extension of stay to join and has completed a period of 2 years as the unmarried or same-sex partner and then the spouse or civil partner of a person present and settled in the United Kingdom; or

__ (c) was admitted to the United Kingdom in accordance with leave granted under paragraph 282(c) of these rules; and

__ (d) the applicant was admitted to the UK or given an extension of stay as the spouse or civil partner of a Relevant Points Based System Migrant; and then obtained an extension of stay under paragraphs 281 to 286 of these Rules and has completed a period of 2 years as the spouse or civil partner of the person who is now present and settled here; or

__ (e) the applicant was admitted to the UK or given an extension of stay as the unmarried or same-sex partner of a Relevant Points Based System Migrant; and during that period married or formed a civil partnership with the person whom he or she was admitted or granted an extension of stay to join and has completed a period of 2 years as the unmarried or same-sex partner and then the spouse or civil partner of the person who is now present and settled in the UK; or

__ (f) the applicant was admitted into the UK in accordance with paragraph 319L and has completed a period of 2 years limited leave as the spouse or civil partner of a refugee or beneficiary of humanitarian protection who is now present and settled in the UK or as the spouse or civil partner of a former refugee or beneficiary of humanitarian protection who is now a British Citizen.

(ii) the applicant is still the spouse or civil partner of the person he or she was admitted or granted an extension of stay to join and the marriage or civil partnership is subsisting; and

(iii) each of the parties intends to live permanently with the other as his or her spouse or civil partner; and

(iv) there will be adequate accommodation for the parties and any dependants without recourse to public funds in accommodation which they own or occupy exclusively; and

(v) the parties will be able to maintain themselves and any dependants adequately without recourse to public funds; and

(vi) the applicant has demonstrated sufficient knowledge of the English language and sufficient knowledge about life in the United Kingdom, in accordance with Appendix KoLL; and

(vii) the applicant does not fall for refusal under the general grounds for refusal.

(b) The requirements for indefinite leave to remain for the bereaved spouse or civil partner of a person who was present and settled in the United Kingdom are that:

- (i) (a) the applicant was admitted to the United Kingdom for a period not exceeding 27 months or given an extension of stay for a period of 2 years as the spouse or civil partner of a person present and settled in the United Kingdom in accordance with paragraphs 281 to 286 of these Rules; or;
- __ (b) the applicant was admitted to the United Kingdom for a period not exceeding 27 months or given an extension of stay for a period of 2 years as the unmarried or same-sex partner of a person present and settled in the United Kingdom in accordance with paragraphs 295AA to 295F of these Rules and during that period married or formed a civil partnership with the person whom he or she was admitted or granted an extension of stay to join; and
- (ii) the person whom the applicant was admitted or granted an extension of stay to join died during that period; and
- (iii) the applicant was still the spouse or civil partner of the person he or she was admitted or granted an extension of stay to join at the time of the death; and
- (iv) each of the parties intended to live permanently with the other as his or her spouse or civil partner and the marriage or civil partnership was subsisting at the time of the death; and
- (v) the applicant does not fall for refusal under the general grounds for refusal.

The judge found [7] that the appellant had “established the requirements of paragraph 287A(ii) and (iii).” He also found [8] that there would be adequate accommodation. The remaining issue was whether the appellant and the sponsor would be able to maintain themselves and any dependants adequately without recourse to public funds. The judge was not satisfied that the appellant was able to meet the requirements of paragraph 287(a)(v). The grounds of appeal challenge that finding. The grounds acknowledge that the judge at no point in her determination used the word “forgery” but the appellant submits that the judge had, in effect, found that documents supplied by the sponsor had been false. It is submitted that the judge’s findings are not available to her given that the respondent had not submitted that the documents were forgeries [21]. Had an allegation of forgery been advanced by the Secretary of State, the appropriate course would have been an adjournment of the hearing to enable the parties to supply additional evidence and for the Secretary of State, at an adjourned hearing, to discharge the burden of proving that the sponsor’s documents were forgeries.

3. In her oral submissions, Mrs Brooksbank relied upon the grounds. I find that this is not a case where the judge has, in effect, introduced an allegation of forgery into proceedings where no such allegation had been made by the Secretary of State. Indeed, the judge was very careful in the language which she has used, in particular at [21]:

“... [Mrs Brooksbank] submitted that the documents [submitted by the sponsor] had not been challenged and had been issued by a reputable company. I agree that the respondent has not stated in the refusal letter that the documents are forgeries. That is because they were not, for some reason, lodged with the application. Mr [Hunt Jackson - the Presenting Officer] did not submit that they were forgeries. Nevertheless he did submit

that the bank statements did not reflect anything like what is claimed Mr Amir earns or pays into his bank account. Whilst the company is no doubt reputable I am surprised that the salary is paid in cash. It is not helpful the letter has emanated not from the head office of the company but from a particular branch or that it is a photocopy with the position of the writer holds in the company identified (*sic*)."

Later, at [23], the judge wrote:

"I find that there has been an attempt to mislead the immigration authorities and this Tribunal as to the income of Mr Amir. It is not for me to speculate what income he actually gets from employment, if any, or from what source. I simply find it has not been established that he earns the income he claims from the source he claims."

Mrs Brooksbank submitted that, in the absence of an allegation of forgery, the Secretary of State and the First-tier Tribunal should have accepted the documents of the sponsor as genuine and as capable of proving that the sponsor earned the income which he claimed to earn. I do not accept that the judge was effectively compelled to accept the documents as reliable of the sponsor's earnings in the absence of a forgery allegation. The judge had to weigh the evidence and make findings accordingly. Throughout the determination, it is clear that she was aware that the burden of proof in the appeal rested on the appellant. The judge found (giving adequate reasons for the finding) that the appellant had simply failed to discharge the burden of proving to the necessary standard that she and the sponsor could maintain themselves without recourse to public funds. The judge plainly had concerns regarding the documentary evidence submitted by the sponsor and it was open to her to attach little weight to that evidence notwithstanding the fact that no allegation of forgery had been raised by the respondent. In short, it was open to the judge to find that the documents did not "reflect the true circumstances" [22].

4. I find that the judge has not erred in law such that her determination falls to be set aside. Accordingly, this appeal is dismissed.

DECISION

5. This appeal is dismissed.

Signed

Date 10 September 2014

Upper Tribunal Judge Clive Lane