



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

Appeal Number: OA/17308/2013

**THE IMMIGRATION ACTS**

**Heard at North Shields  
on 15<sup>th</sup> July 2014**

**Determination  
Promulgated  
On 17<sup>th</sup> July 2014**

**Before**

**UPPER TRIBUNAL JUDGE HANSON**

**Between**

**MEHR UN NISA LUND BALOCH  
(Anonymity direction not made)**

Appellant

**and**

**ENTRY CLEARANCE OFFICER - ISLAMABAD**

Respondent

**Representation:**

For the Appellant: Mr Latif.

For the Respondent: Mrs Rackstraw – Senior Home Office Presenting Officer.

**DETERMINATION AND REASONS**

1. This is an appeal against a determination of First-tier Tribunal Judge NMK Lawrence promulgated on 24<sup>th</sup> April 2014 following consideration of the merits of the appeal on the papers at Hatton Cross.
2. The Appellant is a national of Pakistan born in 1994 who is married to her UK-based sponsor. She applied for leave to enter the United Kingdom to join her sponsor, which was refused as the Entry Clearance Officer was not satisfied the marriage was subsisting and/or that each of the parties to the marriage intended to live with each other as spouses. The application was refused by reference to

paragraph EC-P.1.1 of Appendix FM. The date of decision is 22<sup>nd</sup> August 2013.

3. Following the issue of the decision the Appellant appealed and in the notice of appeal asked that her appeal be determined on the papers. Evidence was received and the file referred to Judge Lawrence as part of his allocated caseload. He sets out his findings from paragraph 6 to 11 of the determination.
4. In those findings the Judge complains on more than one occasion about the fact no oral hearing was sought and in paragraph 10 makes a specific finding that "it is not possible to discharge the burden of proof on the balance of probability on the papers. An Immigration Judge will have to see the witnesses and assess their veracity. This cannot be done on the papers, as the sponsor, unfortunately, seems to think."
5. The Judge did not find on the papers before him that the marriage is subsisting or that each of the parties intend to live with the other permanently, but fails to give any or adequate reasons why this should be so; other than by reference to his generalised statement that such a matter cannot be proved without an oral hearing.
6. The appeal form gives an appellant the option of having an oral hearing or for the appeal to be determined on the papers. If they elect to have the matter determined on the documents they must accept that a judge may not have all the evidence available to them. That does not, however, absolve a judge from the responsibility of doing what the appellant has asked, namely of undertaking a proper assessment of the available evidence and concluding whether the material that has been made available enables the appellant to discharge the burden of proof upon him. If it is a case that having examined the documents a judge does not find that the appellant has proved their case the appeal can be dismissed, but adequate reasons for why the evidence does not satisfy this requirement must be given.
7. If during the course of assessing the merits of an appeal on the papers a judge considers that an oral hearing is required that judge can exercise his or her powers of case management and direct that such shall occur. In this case Judge Lawrence complains that he has been requested to determine the matter on the papers without going on to consider whether such a power should have been exercised. If it had a direction could have been given for the matter to be listed for an oral hearing at a hearing centre convenient to the sponsor.
8. The challenge to the determination is based upon an assertion Judge Lawrence failed to adequately consider the documentary evidence submitted which the Appellant was seeking to rely upon. It is accepted before the Tribunal by Mrs Rackstraw that this ground has merit and

accordingly the determination shall be set aside with there being no preserved findings.

9. In relation to the future management of the appeal, a bundle was served upon the Upper Tribunal on the day of the hearing but was not available to the Presenting Officer. In light of the fact the Appellant has not yet had a proper consideration of her appeal by the First-tier Tribunal it was considered appropriate in all the circumstances for the appeal to be remitted. Mr Latif was contacted and confirmed that his client would prefer an oral hearing. Accordingly the following directions shall apply to the future management of this appeal:

preserved i. The determination shall be set aside with there being no findings.

hearing ii. The appeal shall be remitted for the purposes of an oral Shields on 27 July 2014 before Resident Judge Conway (as agreed with Designated Judge Zucker). Time estimate 2 hours.

to rely upon iii. The parties must file and serve a consolidated, indexed, and statements in the paginated bundle, containing all the evidence they seek truth, and shall no later than five days before the hearing. Witness bundle must be signed, dated, contain a statement not filed in compliance with this direction shall not be admissible without the specific permission of Judge Conway which shall be sought on written application explaining the reason for the delay, the person responsible, the relevance of the evidence, whether the opposing party consents to the evidence being admitted late, and any prejudice to either party in granting or refusing the application.

iv. No interpreter shall be provided unless the appellant's representative specifically requests the same in which case they must confirm the language, dialect, and reason why an interpreter is required in light of the fact the sponsor is settled in the United Kingdom.

Anonymity.

10. The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005. I make no such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 as there is no application for anonymity which is not justified on the facts as known.

Signed.....  
Upper Tribunal Judge Hanson

Dated the 15<sup>th</sup> July 2014