



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: OA/22199 & 22198/2012

THE IMMIGRATION ACTS

Heard at Bennett House, Stoke-on-Trent
On 18 July 2014

Determination Promulgated
On 25 July 2014

Before

The President, The Hon. Mr Justice McCloskey

Between

BUSHRA SHAHEEM AND ZURAAN NAVEED

Appellants

and

ENTRY CLEARANCE OFFICER, ISLAMABAD, PAKISTAN

Respondent

Representation:

Appellants: The Appellants were represented by their sponsor, Muhammad Naveed

Respondent: Ms Johnstone, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. This appeal has its origins in successive, inter-related decisions made by the Entry Clearance Officer (the "ECO") for Islamabad, Pakistan refusing the applications of the Appellants to enter the United Kingdom in the capacities of partner and child,

respectively, of the sponsor. Following a hearing at which the Appellants were unrepresented, the First-tier Tribunal (the “FtT”) dismissed their appeals. Permission to appeal to the Upper Tribunal was granted on the ground that the decision of the FtT was arguably wrong in law on account of having determined the appeal by reference to the revised provisions of the Immigration Rules which came into operation on 09 July 2012. Although the FtT made no finding regarding the legally operative date of the underlying applications to the ECO, its approach in law was expressed unequivocally in the following passage, in [13]:

“..... Appendix FM must supplant paragraph 281, even if the application had been received days earlier than it was received. This is a pivotal finding.”

2. The applications to the ECO are dated 06 July 2012. The following details are recorded on the face of the applications:
 - (a) They were submitted online on 06 July 2012.
 - (b) They were not accompanied by the requisite payment at that time.
 - (c) They were signed by the Appellants on the same date.

The practicalities were that the first-named Appellant, the mother, was to present the requisite payments at the United Kingdom Embassy in Islamabad. The undisputed evidence is that whereas she began her attempts to do so on 06 July 2012, registration and payment did not in fact occur until 09 July 2012. This was due to a closure of the Embassy during the previous days, apparently on account of work pressures. In his evidence to this Tribunal, the sponsor accepted that registration and payment did not crystallise until 09 July 2012. As a matter of law, applications of this kind are not valid until payment of the requisite fee: see Kaur [2013] UKUT 00381 (IAC), [40] especially, Article 3 of the Immigration and Nationality (Fees) Order 2011 and Regulation 37 of the Immigration and Nationality (Fees) Regulations 2011.

3. Given the uncontested fact recorded above, the applications were governed by the new provisions of the Rules operative from 09 July 2012. It follows that the arguable error of law canvassed in the grant of permission to appeal has no substance. The Judge did not err in his selection of the provisions of the Rules governing the applications. Thus the only ground on which permission to appeal was granted must fail.
4. In passing, the sponsor did not challenge the findings of both the ECO and the FtT that his income was insufficient to satisfy the revised provisions of the Rules, which stipulate a gross income of £22,400 per annum. Nor was there any challenge to the Judge’s finding that the applications had failed to provide the documents required by the Rules. The further finding – upholding the ECO – that there was no subsisting relationship between the first Appellant and the sponsor does not arise for consideration as it does not feature in the grant of permission to appeal.

DECISION

5. For the reasons elaborated above, these conjoined appeals are dismissed.

Seamus McCloskey.

THE HON. MR JUSTICE MCCLOSKEY
PRESIDENT OF THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER
Dated: 19 July 2014