



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

Appeal Number: OA/16828/2013

**THE IMMIGRATION ACTS**

**Heard at Newport  
23 July 2015**

**Promulgated on  
2 September 2015**

**Before**

**MR C M G OCKELTON, VICE PRESIDENT  
UPPER TRIBUNAL JUDGE GRUBB**

**Between**

**THE ENTRY CLEARANCE OFFICER, ISLAMABAD**

Appellant

**and**

**SAIRA ILYAS**

Respondent

**Representation:**

For the Appellant: Mr I Richards, Senior Home Office Presenting Officer.

For the Respondent: Mr Hafsa Masood, instructed by Duncan Lewis Solicitors

**DETERMINATION AND REASONS**

1. The respondent (whom we shall call “the claimant”) is a national of Pakistan. She applied to the Entry Clearance Officer for entry clearance as the partner of Irfan Abdul Wahid (“the sponsor”). The Entry Clearance Officer refused her application because he was not satisfied that the parties to the claimed marriage had met, that their marriage was valid, or that their relationship was genuine and subsisting and that they intended to live together permanently. The claimant appealed, and her appeal came before Judge O’Garro in the First-tier Tribunal. Judge O’Garro heard evidence from the sponsor, and considered the documents on file. She

regarded the sponsor as a credible witness. She noted that the marriage had taken place in Pakistan and on the basis of the material before her concluded that the parties had met, that the marriage was valid, and that it was genuine and subsisting. Although she had set out the relevant requirements of the Statement of Changes in Immigration Rules, HC 395, no other feature of them appears to have been drawn to her attention; and she therefore allowed the appeal.

2. The Entry Clearance Officer sought permission to appeal to this Tribunal on three grounds. The first two relate to the judge's conclusions in relation to the marriage. The Entry Clearance Officer submits that Judge O'Garro did not give sufficient reasons for her conclusions in relation to the validity of the marriage; and that she failed to appreciate that the sponsor had changed his domicile from Pakistan to "UK domicile". Permission was not formally granted on either of those grounds, rightly so. The judge took into account not merely an early meeting between the parties, but the sponsor's evidence as to their relationship, which she believed. No other reasons were necessary. So far as domicile is concerned, there is as we understand it no such thing as "UK domicile". The sponsor's domicile of origin was clearly Pakistan. The burden of proof of a change of domicile lies on the party asserting it, and clear evidence is required. Despite the submissions in the grounds of appeal, it appears to us that there is no evidence at all that the sponsor had changed his domicile.
3. The Entry Clearance Officer's third ground is, however, more substantial. In order to obtain the entry clearance she sought, the claimant needed to meet all the "relationship requirements" in paragraphs E-ECP.2.1 to 4.2 of Appendix FM to the Immigration Rules. The requirements as to the nature of the relationship are those of paragraph E-ECP.2.2, but they are preceded by this:

"E-ECP.2.1. The applicant's partner must be -

  - (a) a British citizen in the UK, ...or
  - (b) present and settled in the UK, ... or
  - (c) in the UK with refugee leave or with humanitarian protection."
4. The Entry Clearance Officer's third ground is that the claimant was ineligible for the entry clearance she sought, because she did not meet the requirements of that paragraph. It was on this ground that permission was granted.
5. At the hearing, Mr Masood told us that he did not have the relevant paperwork with him. He was therefore not able to show that the sponsor fell within any of the three categories set out in paragraph E-ECP.2.1. He had claimed asylum on his arrival in the United Kingdom in 1996, and he had been granted leave to remain on 10 February 2012. Mr Masood was not able to say that the leave was as a refugee or on the basis of humanitarian protection.

6. The sponsor is clearly not a British citizen. At the date of the Entry Clearance Officer's decision he was clearly not settled in the United Kingdom: he had leave valid until 9 February 2015. There is no suggestion in that grant that it is on the basis of his being a refugee; his leave at the date of the application on 23 July 2013 is not the subject of any evidence, other than the claimant's own statement that he was "granted asylum". Mr Richards told us that no document known to him supports the claim that the sponsor was granted asylum.
7. In the circumstances it appears to us that the Entry Clearance Officer's third ground is made out. No doubt it is a pity that the matter was not brought to the attention of Judge O'Garro, but she could not properly allow an appeal on the basis of compliance with the Immigration Rules when the evidence before her did not establish that the claimant met the requirements of those rules. She erred in law in her conclusion that the claimant met the requirements of the rules. We shall set aside her decision and substitute a determination dismissing the claimant's appeal.
8. In doing so, however, we put on record that in our view there is no proper basis for doubting Judge O'Garro's conclusions on the nature of the relationship between the claimant and the sponsor. If there is a further application it should be decided on the basis that that relationship has been proved.
9. For the reasons we have given, however, the claimant's appeal is dismissed.

C. M. G. OCKELTON  
VICE PRESIDENT OF THE UPPER TRIBUNAL  
IMMIGRATION AND ASYLUM CHAMBER  
Date: 25 August 2015