



IAC-FH-AR-V1

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

Appeal Number: OA/13335/2014

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 11 January 2016**

**Decision & Reasons Promulgated  
On 10 February 2016**

**Before**

**UPPER TRIBUNAL JUDGE GLEESON**

**Between**

**THE ENTRY CLEARANCE OFFICER  
ISTANBUL**

Appellant

**and**

**BILGE ERTAS  
(NO ANONYMITY ORDER MADE)**

Respondent

**Representation:**

For the Appellant: Mr S Whitwell, a Senior Home Office Presenting Officer

For the Respondent: Miss E Daykin, Counsel, instructed by Stuart Karatas Solicitors

**DECISION AND REASONS**

1. The Entry Clearance Officer appeals with permission against the decision of the First-tier Tribunal allowing under the Immigration Rules the claimant's appeal against the Entry Clearance Officer's decision to refuse her entry clearance to join her spouse in the United Kingdom.
2. The basis of the refusal was that the Entry Clearance Officer did not accept that the marriage was genuine and subsisting, or that the evidence of

Class 2 National Insurance contributions had been provided with the application. All other specified documents were provided.

### **First-tier Tribunal decision**

3. The First-tier Tribunal decision records that by the beginning of the hearing the genuine and subsisting nature of the relationship between the parties was no longer in issue and that the evidence showed that the Class 2 national insurance contributions, the only other outstanding matter in the refusal notice, had in fact been paid. The only dispute was whether those documents had been made available at the time of the application.
4. At paragraph 8 of his decision the First-tier Tribunal Judge said this:
  - “8. I had sight of the original Class 2 NIC documents at the hearing, copies of the appellant's spouse's registration for self-assessed tax and NI contributions are contained at pages 56-58 of the appellant's bundle and copies of his Class 2 NICs are contained at pages 11-16 covering the period 6 October 2012-28 March 2015. In other words the evidence of the payment of Class 2 NICs covers the relevant period, that of the ECO's decision.
  9. As this was the only issue identified by the ECO in his/her decision that was left to me to decide I found in favour of the appellant at the hearing.”

### **Permission to appeal**

5. Permission to appeal was granted on the basis that there was only one issue before the First-tier Tribunal Judge, the absence of evidence of National Insurance contributions having been submitted with the application and that therefore, it was not open to the First-tier Tribunal to allow the appeal.

### **Discussion**

6. Paragraph 85A of subsection 85(5) of the 2002 Act as it stood at the date of decision reads as follows:

“The Tribunal may consider only the circumstances appertaining at the time of the decision to refuse.”
7. The question of payment of the Class 2 National Insurance contributions is a circumstance appertaining at the time of the decision to refuse and the Tribunal was therefore entitled to have regard to it.
8. My primary finding is that there is no error of law in the First-tier Tribunal's decision but even if there were I find that it was immaterial since the evidence showed plainly that at the date of decision, the appellant met the requirement of the Rules.
9. Accordingly I uphold the First-tier decision and dismiss the respondent's appeal.

**Conclusions**

The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law. The decision of the First-tier Tribunal shall stand.

Signed: *Judith A J C Gleeson*  
Upper Tribunal Judge Gleeson

Date: 3 February 2016