Upper Tribunal
(Immigration and Asylum Chamber) Appeal Numbers: OA/13129/2013

THE IMMIGRATION ACTS

Heard at Glasgow	**Determination Promulgated**
On 18 December 2014	**On 15 April 2015**

Before

MR C M G OCKELTON, VICE PRESIDENT
UPPER TRIBUNAL JUDGE MACLEMAN

Between

THE ENTRY CLEARANCE OFFICER, KUWAIT

Appellant

and

SAFFA HUSSAIN KHAN

Respondent

Representation:
For the Appellant: Mr M Matthews, Senior Home Office Presenting Officer
For the Respondent: Mr A Caskie, instructed by Innes Johnson Solicitors

DETERMINATION AND REASONS

1. The respondent in this appeal by the Secretary of State, whom we shall call "the claimant", is a national of Pakistan. She applied, apparently on 12 April 2013 (that is the date the application fee was received) to the Entry Clearance Officer for entry clearance as a spouse. She was refused. The date of that decision appears to have been 15 May 2013. She appealed, and there was a hearing before Judge Gillespie in the First-tier Tribunal. That was on 28 February 2014, and his decision was sent out on 2 May 2014. He allowed the appeal. The issues before him related to

whether the claimant could satisfy the maintenance requirements of the Rules. He examined copious documentary evidence and heard oral evidence, which he appears to have regarded as wholly credible. He was satisfied that the claimant and her husband had access to the amount of money demanded by the rules.

2. The Entry Clearance Officer now appeals to this Tribunal, with permission. The application for permission was submitted, months out of time, on 4 September 2014. Judge Shimmin, a Judge of the First-tier Tribunal, decided that time should be extended, and granted permission to appeal. In response to that grant, the claimant submitted a notice under Rule 24. That notice purports to reserve the claimant's position in relation to the decision to extend time.

3. The grounds of appeal are undoubtedly strong. They point out that Judge Gillespie appears to have wholly ignored the requirements of the Rules relating to the manner in which an applicant is required to prove financial standing. The documents before the Entry Clearance Officer and before the Judge were wholly incapable of satisfying the rules. Mr Caskie's response was to assert that the judge had indeed mentioned the relevant rules, but he was unable to demonstrate any material adherence to them. He acknowledged that there had been no suggestion by the claimant that Judge Gillespie's decision to allow the appeal should be upheld on any other ground. After considering the matter he told us that he no longer resisted the Entry Clearance Officer's appeal.

4. In those circumstances we are content to find that Judge Gillespie erred in law as asserted in the Entry Clearance Officer's grounds. We set aside his determination and substitute a determination dismissing the claimant's appeal.

5. The fact that the Entry Clearance Officer's application for permission to appeal to the Upper Tribunal was so long out of time does, however, cause us considerable concerns. The application for permission recognises the delay. The determination is said to have been received in the Home Office on 7 May 2014, when a particular Presenting Officer was out of the office, and, as he explains, "when absent my work is not routinely covered by colleagues because of a lack of resources". The Presenting Officer returned to work on 12 May but was not made aware of this determination, and did not discover about it until September, when he immediately took steps to attempt to appeal against it. Judge Shemmin's response to that was as follows:

> "Given that there may have been an interaction between increased First-tier listings and Home Office deployment I am persuaded that the lateness of the application is not fatal and that it should be admitted, it being in the interest of justice that it should be".

6. There was, of course, no right of appeal against Judge Shimmin's decision, and there was no other attempt to set it aside. We do, however regard it as deeply unsatisfactory. First, it appears to be based partly on an

explanation that was in the Judge's mind but had not been pleaded by the applicant. Secondly, we should have regarded such long extension of time as requiring substantially more in the way of reasons. What was essentially being said on behalf of the Entry Clearance Officer is that there is (or at the time was) no efficient system for ensuring that adverse determinations are considered and, if necessary, dealt with, within the appropriate timescale. It is very difficult to see how the absence of such a system can itself be the ground for extending time, particularly given that the Secretary of State's resources are obviously considerably larger than those of any appellant. We hope that judges faced with applications of this nature will in future deal with them on the grounds on which they are made and provide what can be regarded as proper reasons, based on their approach to those grounds, for a decision that time be extended.

7. Having said that we accept that the grounds in the present case were exceptionally strong. Although the strength of grounds cannot by itself be a reason for extending time, where some acceptable excuse for the delay is provided, the strength of the grounds may help to outweigh the weakness of the excuse see BO (Nigeria) [2006] UKAIT 00035.

8. For the reasons we have given, the Entry Clearance Officer's appeal is allowed.

C. M. G. OCKELTON
VICE PRESIDENT OF THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER
Date: 12 March 2015