



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

Appeal Number: UI-2022-002798
on appeal from HU/01868/2021

THE IMMIGRATION ACTS

**Heard at Field House
On 19 October 2022**

**Decision & Reasons Promulgated
On 18 December 2022**

Before

**UPPER TRIBUNAL JUDGE GLEESON
DEPUTY UPPER TRIBUNAL JUDGE METZER**

Between

ENTRY CLEARANCE OFFICER

Appellant

And

**NASEER AHMED
[NO ANONYMITY ORDER]**

Respondent

Representation:

For the appellant: Mr Steven Walker, a Senior Home Office Presenting Officer
For the respondent: Mrs Anwar Begum, sponsor in person.

DECISION AND REASONS

1. The Entry Clearance Officer appeals with permission from the decision of the First-tier Tribunal allowing the claimant's appeal against the respondent's decision on 23 February 2021 to refuse him entry clearance as the spouse of Mrs Anwar Begum. The claimant is a citizen of Pakistan.
2. The sponsor, Mrs Begum is a British citizen. She appeared at the hearing without legal representation, supported by a McKenzie friend.
3. **Mode of hearing.** The hearing today took place face to face.

Background

4. The claimant lives in Saudi Arabia, where he is employed as a sales representative.
5. The parties met for the first time in Pakistan in November 2017. They were married there on 27 November 2017 and lived together for a short period, ending on 18 December 2017. The claimant then returned to Saudi Arabia and the sponsor to the UK, where she is a citizen.
6. They cohabited again in 2019 for two relatively brief periods, between 1 and 18 January 2019 and between 3 June 2019 to 20 August 2019. They have not seen each other since then. We have regard to the travel difficulties caused by the Covid-19 pandemic from March 2020 to the end of 2021.
7. There are no children of the marriage, but the sponsor has an adult son, who still lives at home.

Refusal decisions

8. There have been two entry clearance applications for this claimant on the basis of his claimed status as a spouse: the first was on 11 January 2021 and the second on 23 February 2021. Both were unsuccessful. The Entry Clearance Officer was not satisfied that the marriage was genuine and subsisting, in part because of the short period of cohabitation, but also because the parties gave what he regarded as significantly different answers in their marriage interviews.
9. The present appeal is against the second decision on 23 February 2021. The Entry Clearance Officer took into account a letter explaining the sponsor's medical circumstances, the benefit her general medical practitioner considered that she might derive from his being able to join her in the UK, and her financial circumstances, including the benefits payments which she receives.
10. The Entry Clearance Officer was not satisfied that the income which the sponsor receives is adequate for them both: after deducting her housing costs, she received £40.79 a week less than that to which an UK-resident family of equivalent size would be entitled.
11. The claimant appealed to the First-tier Tribunal.

First-tier Tribunal decision

12. The First-tier Tribunal allowed the appeal. The sponsor represented the claimant without legal assistance. She and her adult son both gave evidence, the sponsor being assisted by a Punjabi interpreter. The sponsor's son confirmed that he helped with the bills and gave his mother an additional £600 monthly.

13. The First-tier Judge found the sponsor and her son to be credible witnesses. She was satisfied that they had given her a reliable picture of the financial circumstances of the sponsor's household: the Entry Clearance Officer did not suggest to the contrary.
14. The First-tier Judge also found that the marriage was genuine and subsisting and that the parties had the intention to live together. She accepted the sponsor's evidence that she had spoken to the claimant just before the hearing. She set out her calculation of the funds available to the sponsor, including the payments made to her by her son, and found that the resulting amount 'comfortably exceeds the income support figure' and that the claimant had demonstrated that at the date of decision there was adequate maintenance available.
15. The Entry Clearance Officer appealed to the Upper Tribunal.

Grounds of appeal

16. The Entry Clearance Officer in his grounds of appeal argued that the First-tier Judge had erred in the application of Appendix FM E-ECP.3.2., which listed the sources of income which could be taken into account, and which did not include third party support. The only exception was where GEN.3.1. applied and paragraph 21A of Appendix FM-SE was satisfied, on which the Judge had made no findings.
17. Further, it was submitted the First-tier Judge had failed to deduct council tax when making her calculations. If that adjustment was made, and the third party support not included, the sponsor's income fell short by £62.66 of the required equivalent income support figure of £116.80 and the requirements of the Rules were not met.
18. There was no challenge to the First-tier Judge's finding that the marriage is genuine and subsisting, albeit on the basis of infrequent visits and at a distance.

Permission to appeal

19. Permission to appeal was granted on the following basis:

"1. The application is in time. The grounds complain that the Judge has made an error of law because in considering Appendix FM E-ECP.3.1.(c) and assessing the financial position of the [claimant], the Judge failed to appreciate that third party support is excluded. Further, the Judge failed to make a deduction in respect of council tax. Reading the decision, it does appear that this is so.

2. The point in respect of GEN.3.1 and 21A of FM-SE carries less merit because the Judge mentions at paragraph 41 that the reasons for refusal do not contest that the specified evidence was provided."

Rule 24 Reply

20. There was no Rule 24 Reply on behalf of the claimant.

21. That is the basis on which this appeal came before the Upper Tribunal.

Upper Tribunal hearing

22. At the hearing, the sponsor gave evidence. She told us that she was previously married, in an arranged marriage, some 20 or more years ago. From that marriage, she has three sons, her firstborn (now an adult) and twin boys born two years later. Her first husband divorced her while they were on Hajj pilgrimage together, and married her late brother's widow. He still lived locally to the sponsor.
23. The sponsor has raised her sons alone. They are all still unmarried. Her elder son was now a taxi driver, a hard working man.
24. The sponsor has breast cancer but is willing to work. She has been offered part-time work, and her future employer would be willing to employ the claimant as well.
25. The sponsor considered that the First-tier Tribunal decision in her favour ought to be maintained and asked us to dismiss the Entry Clearance Officer's appeal.

Analysis

26. With regard to the Entry Clearance Officer's challenge under GEN.3.1 and 21A of FM-SE, we consider that to be unarguable. The Entry Clearance Officer did not contest that the claimant had provided the specified evidence: his argument was that the income which it disclosed was insufficient, since once housing costs and council tax were deducted, it fell below the income support equivalent level of £116.80 per week.
27. The question is whether in making that calculation, the Judge erred in having regard to the contribution made by the sponsor's son to her household expenses. The figures in that calculation are not otherwise in dispute.
28. The financial requirements for entry clearance as a partner are set out in paragraph E-ECP.3.1. The sponsor does not have the income or the savings which E-ECP.3.1(a) and (b) require.
29. Paragraph E-ECP.3.1(c) provides a route for entry clearance where the UK partner is in receipt of certain allowances and payments, the sources of income being set out in an exhaustive list at E-ECP.3.3:
- "E-ECP.3.1. The applicant must provide specified evidence, from the sources listed in paragraph E-ECP.3.2., of- ... (c) the requirements in paragraph E-ECP.3.3. being met.
- E-ECP.3.3. The requirements to be met under this paragraph are-
- (a) the applicant's partner must be receiving one or more of the following -
- (i) disability living allowance;

- (ii) severe disablement allowance;
- (iii) industrial injury disablement benefit;
- (iv) attendance allowance;
- (v) carer's allowance;
- (vi) personal independence payment;...; **and**

(b) the applicant must provide evidence that their partner is able to maintain and accommodate themselves, the applicant and any dependants adequately in the UK without recourse to public funds. ...”

30. The benefits which the sponsor is receiving fall within E-ECP.3.3(a) but are not sufficient to maintain her and the claimant without additional recourse to public funds or third party support. There is no provision among the sources of income listed at [29] above for third party support to be included, such as the payments which her son is helpfully making to sustain her. As we said to the sponsor at the hearing, we are not without sympathy for the predicament in which she and the claimant find themselves, but it is quite clear that the Rules are not met.
31. The sponsor now says (but this was not the basis of this application or her argument before the First-tier Tribunal) that she is able to work, despite her health problems, and that she has a potential part-time employer who would also employ her husband.
32. It remains open to the sponsor to make the relevant calculations and re-apply on the basis of that factual matrix. That might allow her to bring herself within paragraph E-ECP.3.1(a) or (b) but that is an application which has not been made and cannot cure the error made by the First-tier Judge in relation to the decision under appeal.
33. The decision of the First-tier Judge is incorrectly reasoned and cannot stand.

DECISION

34. For the foregoing reasons, our decision is as follows:

The making of the previous decision involved the making of an error on a point of law.

We set aside the previous decision. We remake the decision by dismissing the claimant's appeal.

Signed [Judith AJC Gleeson](#)
2022

Date: 9 November

Upper Tribunal Judge Gleeson

