



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

Appeal Number: OA/07641/2013

THE IMMIGRATION ACTS

Heard at Birmingham Sheldon Court

**Determination
Promulgated**

On 20 June 2014

Prepared 20 June 2014

On 7 July 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE DAVEY

Between

**MRS NELOFAR AZHAR SOHAIL
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

ENTRY CLEARANCE OFFICER - ISLAMABAD

Respondent

Representation:

For the Appellant: Mr Mazar Hussain, the Sponsor

For the Respondent: Mr D Mills, Senior Presenting Officer

DETERMINATION AND REASONS

1. The Appellant, a national of Pakistan, date of birth 4 February 1964, appealed against the Respondent's decision dated 27 February 2013 to refuse entry clearance to join her spouse under Appendix FM of the Immigration Rules. Refusal was with particular reference to paragraphs

EC-P.1.1., E-ECP.4.2. and E-ECP.4.1. In short, the Appellant did not have the necessary approved English language test result.

2. It is accepted by the Sponsor that the Appellant did not have the necessary English language test result either at the date of application or the date of the Respondent's decision or by the date of the judge's decision.
3. It therefore meant inevitably that the appeal failed under the Rules.
4. The judge was provided with a range of information and submissions about the Sponsor's health. Those issues are set out in paragraphs 13, 16, 17, 18, 19, 20, 21, 23, and 24 of the determination.
5. Permission to appeal that decision was given by Designated First-tier Tribunal Judge Zucker on 22 April 2014 on a limited basis that it was arguable that insufficient consideration had been given to Article 8 ECHR rights appertaining at the date of decision in this case in connection with the Sponsor's ill-health.
6. The Sponsor essentially indicated his disappointment at the outcome and his belief, although he accepted it would not have ultimately made any difference to the judge's decision, that time was given to provide a University of Punjab degree certificate before the decision was promulgated. However, the judge's decision was promulgated earlier than had been indicated: It is unfortunate, if the same occurred, that it did so.
7. Having considered the submissions and the understandable position that the Sponsor wished to be joined by his wife which is their mutual objective I find that the judge did fairly recite the bundle of correspondence and documents provided by the Sponsor concerning his health. I went through the determination with the Sponsor to ensure that all material letters he had relied on had been referred to by the judge.
8. In the circumstances I do not find there is any lack of consideration of the Sponsor's ill-health and of course it was a matter of judgment and weight

in assessing proportionality what weight to give to that as an issue. Whilst I might not have reached the same decision that does not indicate that there is an error of law. I only interfere where there are matters which had been admitted or not considered or where matters have been considered and inappropriate considerations have been given to the information, documentation or submissions raised. As such I found in assessment of the medical issues under the Article 8 ECHR claim the judge made no material error of law.

9. I wish to emphasise that there is no suggestion in the papers whatsoever nor do I find any sign of it nor in submissions made by Mr Mills of a lack of good faith by either the Appellant or the Sponsor. I am satisfied that the application was genuine. It is unfortunate that in the circumstances the test certificate was not provided and a fresh application being able to be made sooner. As it is the Appellant has now got Canadian citizenship and it is accepted by Mr Mills that that will be a proper basis for her to show she meets the English language requirements.
10. No anonymity direction is made.
11. The original Tribunal's decision stands. The appeal is dismissed.
12. Fee Award.

Since the appeal has failed it is not appropriate to make a fee award.

Signed

Date 3 July 2014

Deputy Upper Tribunal Judge Davey