



**First-tier Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: OA/08056/2013

THE IMMIGRATION ACTS

Heard at Field House

On 3 December 2013

Determination

Promulgated

On 21 January 2014

.....

Before

**MR JUSTICE MITTING
UPPER TRIBUNAL JUDGE MARTIN**

Between

NUZHIA FATIMA FUAAD

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Fuaad Haamed Chaudhry, non-legal rep (Sponsor)

For the Respondent: Mr P Duffy, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. On 19 February 2013 the appellant applied for entry clearance as the spouse of a Tier 1 (Post-Study) Work Migrant. On 6 March 2013 her application was refused by an Entry Clearance Officer. She appeals

against that refusal. Her appeal was itself refused by the First-tier Tribunal in a determination and reasons promulgated on 3 October 2013.

2. The appellant was born in Pakistan on 8 August 1987. She had an arranged marriage contracted at a distance with her husband and sponsor on 30 July 2011. A marriage ceremony was performed which both attended in person in Pakistan on 8 September 2012.
3. The Entry Clearance Officer decided that there was no evidence provided to show contact and intervening devotion between the appellant and her husband. Judge Freer was satisfied that despite the view of the Entry Clearance Officer there was sufficient evidence for him to find to the relevant threshold, that is to say on the balance of probabilities, that it was the appellant's intention to live together with her husband throughout his stay and her stay in the United Kingdom. He then went on to consider evidence of the husband's intention. This was a paper application. Therefore, Judge Freer only considered the documents put in by the appellant and her husband and sponsor. They included the marriage certificate; two affidavits, one from her husband and one from his paternal uncle, devoted in reality to proof of the marriage; some photographs, some of which bore dates, taken at the marriage ceremony and on their honeymoon; and evidence of telephone calls between them when they were separated and likewise of emails.
4. This material satisfied Judge Freer that at the date of the application "there was adequate evidence of a subsisting relationship for the purposes of subparagraph 319C(d)" of the Immigration Rules. He then went on to give his reasons notwithstanding that finding for dismissing the appeal. He expressed it thus: "I am minded to dismiss the appeal but only on the 'intentions' ground in subparagraph 319C(e)". It can be discerned from his reasoning in paragraph 12 that he found the written material provided to substantiate the husband's intention inadequate to discharge the burden of proof on the appellant.
5. We readily understand that conclusion and had matters rested there would have had no difficulty in concluding that the decision was not based upon an error of law and contained no error of law. But we are unable in the light of the facts and findings we have recited to be able rationally to reconcile Judge Freer's conclusion that he was satisfied that there was a subsisting relation at the date of the application, that is to say a marriage, and satisfied that it was the appellant's intention to live with her husband, with his conclusion that the "intentions" ground was not satisfied. What in effect he has decided is that although he was satisfied that there was a genuine marriage and that one of the parties of the marriage intended to live with the other, he was not satisfied that the other party intended to live with the first person. This seems to us to be logically curious, so curious as to be unsustainable. Accordingly we find that the decision did contain a highly material error of law.

6. We must then consider what to do about it. We are told by the appellant's sponsor, her husband who has appeared before us today, that she is pregnant and expects their first child towards the end of this month or early next month. His own visa will, by the end of February next year, have less than six months to run, so that under the Immigration Rules he will not be in a position to sponsor her. In those circumstances, although we could remit the matter for further hearing back to the First-tier Tribunal we propose to take the shortcut of hearing him on oath ourselves.
7. Having identified an error of law in the decision of the First-tier Tribunal we have heard evidence on oath given by the appellant's sponsor and husband. He has produced to us his original Pakistani passport which bears plainly genuine entries which confirm his own evidence about his travels to and from Pakistan via the United Arab Emirates. He gave his evidence in a frank and open manner. When asked to deal with unexpected byways such as the entry stamps on his passport showing that he entered the United Arab Emirates passport control on 11 March and exited it on 12 March this year his explanation for that was that his flight was delayed by a snowfall in the United Kingdom so that he missed his connecting flight at Dubai and was put up in a hotel overnight. That explanation is the sort of thing which permits a Tribunal to tell whether or not someone is speaking the truth frankly, and without prior preparation he gave us an entirely unforced account of what occurred then and was clearly telling the truth about it.
8. We are satisfied he is telling us the truth about much more important matters, namely his marriage, the fact that it is a genuine marriage and a consummated one. What the First-tier Tribunal did not know and what in fact he could readily have said is that his wife was then pregnant. She is due to give birth either at the end of this month or the beginning of next month. He has shown us on his mobile telephone what is clearly a genuine hospital record confirming that fact. This is obviously a subsisting marriage and provided that immigration control permits it, it is obviously her intention to live with him while he is in the United Kingdom and his intention to live with her. Although this was an arranged marriage it is clearly a genuine one and the parties intend to fulfil their mutual responsibilities to the other.
9. Accordingly, having identified an error of law in the decision of the First-tier Tribunal, having heard evidence which for obvious reasons the First-tier Tribunal was unable to hear, we are satisfied that the requirements of paragraph 319C(e) as well as 319C(d) are satisfied, and that this appeal is therefore allowed.

Signed

Date

Mr Justice Mitting