



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

**Appeal Number: IA/01718/2015**

**THE IMMIGRATION ACTS**

**Heard at Field House**

**Decision & Reasons**

**On 27<sup>th</sup> January 2016**

**Promulgated**

**On 12<sup>th</sup> February 2016**

**Before**

**UPPER TRIBUNAL JUDGE FRANCES**

**Between**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**and**

**ALI USMAN**

(ANONYMITY DIRECTION NOT MADE)

Respondent

**Representation:**

For the Appellant: Mr S Staunton, Home Office Presenting Officer

For the Respondent: Mr P Turner, Counsel instructed by Middlesex Law Chambers

**DECISION AND REASONS**

1. I shall refer to the parties as in the First-tier Tribunal. The Appellant is a citizen of Pakistan born on 8<sup>th</sup> February 1989. His appeal against the refusal to issue him with a residence card as confirmation of a right of residence as the spouse of a Romanian national was allowed by First-tier Tribunal Judge Coutts under the Immigration (EEA) Regulations 2006 in a decision promulgated on 28<sup>th</sup> July 2015.
2. The Respondent appealed on the grounds that the judge had failed to provide adequate reasons for the positive findings made and failed to engage with, or address any of the grounds taken against the Appellant by the Respondent. The decision failed to record any of the evidence of the

four witnesses and failed to give reasons for why he found the witnesses to be credible.

3. The Respondent relied on the case of MK (duty to give reasons) Pakistan [2013] UKUT 00641 where the Tribunal found:

“If a Tribunal finds oral evidence to be implausible, incredible or unreliable or a document to be worth no weight whatsoever it is necessary to say so in the determination and for such findings to be supported by reasons. A bare statement that a witness was not believed or that a document was not afforded weight is unlikely to satisfy the requirement to give reasons.”

4. The Respondent submitted that the principle applied to positive credibility findings and also relied on the case of Budhathoki (reasons for decisions) [2014] UKUT 00341 (IAC) where the Tribunal held that it was necessary for judges to identify and resolve key conflicts in the evidence and explain in clear and brief terms their reasons so that the parties could understand why they had won or lost.
5. Permission was granted by First-tier Tribunal Judge McDade on the ground that it was arguable that the judge’s findings and reasons, which were no more than half a page in length, did not engage or address any of the Respondent’s objections and consequently did not give confidence that the judge had engaged in a thorough and proper analysis of the evidence presented.
6. Mr Staunton relied on the grounds of appeal and submitted that this was a reasons challenge. The judge did not pay attention to the refusal letter and did not deal with the matters therein, namely the absence of female clothing and belongings in the Appellant’s room when it was searched by an Immigration Officer and the false reply he gave in relation to his mobile phone.
7. The judge’s conclusion at [17] that “on balance I find that the whole weight of the oral and documentary evidence here points towards this being a genuine and subsisting relationship between the Appellant and Sponsor” was not substantiated by reasons. The judge had failed to give reasons for why he came to that conclusion and [14] was insufficient to show that the judge had considered the evidence of all four witnesses. The judge failed to show how the conflicts in evidence had been resolved and had not addressed the specific factual issues raised in the refusal letter.
8. Mr Turner submitted that the issue before the judge was whether the relationship was genuine or not. The oral evidence in the Record of Proceedings was referred to at [3] of the decision and the judge had also considered the significant documentation submitted. The judge set out the Respondent’s case at [7] to [9] and had therefore not ignored it.
9. The judge had regard to the evidence of all four witnesses to whom he referred at [13]. Credibility was a key issue and the judge found all four

witnesses to be credible. The judge summarised the evidence before him in the Record of Proceedings and identified the issues in the case. The judge had properly directed himself in law and there was no arguable error in his decision to allow the appeal under the EEA Regulations 2006.

### **Discussion and Conclusions**

10. The judge's findings and reasons are brief. However, I am of the view that they are sufficient to support his conclusion that the Appellant and Sponsor were in a genuine and subsisting relationship for the following reasons.

11. The Respondent relied on a visit made by Immigration Officers to the Appellant's home address and the following facts are set out in the refusal letter:

"When asked about your Sponsor you claimed she had returned to Romania because of her sick daughter. You claimed that your Sponsor's daughter was suffering from a fever and unable to give any other information. You were unable to state when your claimed spouse left the UK and did not know her date of birth. When asked by officers to show your wife's belongings you opened a wardrobe full of female clothing all of which were in a size small. When asked what size your spouse was you stated that you did not know and that your spouse was much larger than you, further confirming this with photographs. You then claimed that you did not know who the clothing belonged to. No cosmetics or shoes were present in the bedroom. You were then asked if you could show evidence of your relationship by way of texts and calls on your mobile phone. You stated that your mobile phone was only a week old and unlocked it and handed it over to our officers. When checked it was found that the phone was much older than one week old as calls were made earlier than a week ago. There was no communication through facebook, whatsapp or viber, even though you claim to have been in a relationship with your spouse since January 2011."

12. It is evident from the Record of Proceedings that the issues raised in the refusal letter were dealt with by the witnesses in oral evidence. It is noteworthy that there was no Presenting Officer at the hearing before the First-tier Tribunal. However, the Record of Proceedings indicates that the Appellant, the Sponsor and the two witnesses had given consistent evidence about when they married, where they married and when they had met.

13. The Appellant and the Sponsor, also dealt with the items of clothing found when Immigration Officers visited the Appellant's room. The Appellant explained that the clothing in the wardrobe belonged to his wife (the Sponsor) and that there were some cosmetics, hand lotion, shampoo and cream on the dressing table in the room. He explained that he had not made any calls to his wife on his mobile phone because he had used prepaid calling cards.

14. The Sponsor explained that she had to go to Romania as a matter of urgency because her daughter was sick and that she had left her belongings in the room which she shared with the Appellant. The clothing belonged to her and the smaller clothing was given to her by an aunt for her daughter.
15. The evidence of the other two witnesses was consistent in relation to when the parties met and when they were married. Accordingly, there was evidence before the judge which dealt with the matters raised in the refusal letter. The judge was entitled to rely on this evidence to come to the conclusion that he did. There was no material error of law in his failure to set out the oral evidence in his decision.
16. The judge found the witnesses credible on the basis they gave their evidence in a straightforward manner. This finding was open to the judge given the consistent accounts given by each witness and his reasons were adequate.
17. The judge also took into account at [14], [15] and [16] the documentary evidence which had been submitted confirming that the Appellant's wife had been living at the same address since 2010, that there was a medical certificate confirming her daughter's admission to hospital and that there were numerous tax returns, bank statements, council tax statements, water statements all showing that the Appellant and the Sponsor had lived at [ ] during the period from November 2011 to December 2015. The judge took into account all this evidence in coming to his conclusion at [17] that the relationship was genuine.
18. Whilst the judge may be criticised for failing to set out why he preferred the Appellant's evidence over and above the evidence of the Respondent when Immigration Officers attended the Appellant's home, the failure to deal with that was not in fact material to the decision.
19. It is clear from reading the determination as a whole, the Record of Proceedings and the Appellant's bundle of documents that the judge considered the Appellant's explanation for the matters set out in the refusal letter and that on the totality of the evidence he preferred the evidence of the Appellant as opposed to that of the Respondent.
20. Accordingly, I find that there was no material error of law in the decision dated 9<sup>th</sup> July 2015. The judge's reasons were brief but they were adequate and there was ample evidence before him to support his findings at [17]. The Respondent's appeal is dismissed.

### **Notice of Decision**

The Respondent's appeal is dismissed

No anonymity direction is made.

Signed

**J Frances**

Upper Tribunal Judge Frances  
2016

Date: 9<sup>th</sup> February