



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

Appeal Number: HU/03786/2015

THE IMMIGRATION ACTS

**Heard at Field House
On 7th September 2017**

**Decision & Reasons
Promulgated
On 5th October 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE GRIMES

Between

**MRS SAFIA ZULIFAR
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms M Vidal, Haris Ali Solicitors

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

DECISION AND REASONS

1. The Appellant a national of Pakistan, appealed to the First-tier Tribunal against a decision of the Entry Clearance Officer dated 15th July 2015 to refuse her application for entry clearance to join her spouse, a British citizen, in the UK. First-tier Tribunal Judge A J M Baldwin dismissed the appeal in a decision promulgated on 7 April 2017. The Appellant now appeals to this Tribunal with permission granted by Upper Tribunal Judge Pitt on 11th July 2017.

2. The Entry Clearance Officer refused the application on only one ground. The ECO was not satisfied that the Appellant's relationship with the Sponsor is genuine and subsisting or that they intend to live together permanently in the UK in accordance with paragraph EC-P.1.1.(d) of Appendix FM of the Immigration Rules. The ECO noted that it was an arranged marriage and that the Appellant and Sponsor are related as paternal first cousins. However the ECO noted that it was reasonable to expect that there would be regular contact and communication between a couple. Although there were photographs of the marriage ceremony, there was no evidence submitted as to the time the couple had spent together as a couple rather than as relatives. The communication between them was insufficient to demonstrate contact between the parties as a couple, rather than just as relatives, from either before or since the marriage.
3. At the hearing in the First-tier Tribunal the judge heard oral evidence from the Sponsor and his mother and considered further documentation submitted in support of the appeal. In his findings the judge identified that the first and primary issue to be determined was the genuineness of the marriage. The judge made findings in relation to discrepancies as regards the evidence in relation to the marriage ceremony. The judge considered the Sponsor's evidence about the lack of documentary evidence of contact before the decision including his evidence that he had lost his phone. The judge rejected the explanation put forward for the lack of documentary evidence in relation to contact before the refusal. The judge considered the evidence of contact after the refusal and noted discrepancies between the evidence of the Appellant and Sponsor in relation to the duration of contact between the parties. The judge noted further discrepancies in relation to the potential for the Sponsor to visit the Appellant in Pakistan [24]. The judge concluded that the Appellant had not proved that her marriage is probably genuine and subsisting and that both of them intend to live together permanently as spouses in the UK. The judge did not doubt that they are close blood relatives who are very close to each other, having grown up from birth in the same household, but did not accept that the relationship was as claimed[25]. The judge went on to put on record concerns in relation to the financial evidence which had become apparent during the hearing [26].
4. In the renewed Grounds of Appeal to the Upper Tribunal the Appellant complains that the judge made an error of law in relation to his assessment about the genuineness of the marriage in that he gave weight to immaterial matters around the evidence about their wedding. It is submitted that the judge erred in his approach to the evidence about the Sponsor's phone. The second ground contends that the judge erred in making findings in relation to the financial situation when that was not in issue at the hearing.
5. In granting permission to appeal Upper Tribunal Judge Pitt suggested that it was arguable that the First-tier Tribunal Judge took an incorrect approach to the evidence concerning the genuineness in the marriage, for

example the potentially corroborative evidence of the Sponsor's mother and the financial evidence.

6. At the hearing before me Ms Vidal submitted that the First-tier Tribunal's Judge's overall approach to the evidence was flawed. It is suggested that the judge's approach at paragraph 22 to the evidence about the wedding affected the way the rest of the evidence was assessed. It is suggested that the judge's conclusion at paragraph 23 that the Sponsor would not have been able to provide records of calls and communications he had with the Appellant during his three year engagement before he lost his phone was speculative as it is not clear whether the Sponsor, or indeed anyone experienced in this type of area would be able to provide evidence as to whether such records would still exist. In her submission the judge's conclusion at paragraph 24 that the fact that there had only been one visit since the marriage was not satisfactory was a subjective analysis and failed to take account of the fact the Sponsor had tried to expedite the hearing. She submitted that it was clear that the judge was against the Appellant from the outset. In her submission the judge's findings were permeated by irrationality. She argued that the judge's conclusions at paragraph 25 that the evidence of post-refusal contact could be equally consistent with a determined attempt on the part of the Appellant to get herself into the UK for other reasons assisted by the Sponsor and his mother failed to take into account the evidence which could have led to a conclusion that there was a genuine marriage. She submitted that the judge erred in failing to take into account any positive factors from the evidence placed before the court. She submitted that there was inadequate notice for the Sponsor to deal with the judge's concerns in relation to the financial issue. She said that, although at the hearing attempts were made to obtain further evidence, the Appellant and Sponsor were at a serious disadvantage as the judge seemed to have taken against them early on.
7. In response Mr Duffy submitted that the grounds put forward by the Appellant are simply a disagreement with the findings. He submitted that even the issue about the consideration of the financial evidence only arises if the Appellant has established that there is an error of law in relation to the findings as to the genuineness of the marriage. In any event, in his submission, had the Appellant and Sponsor felt that they were disadvantaged by the issues being raised at the hearing they should have sought an adjournment in order to obtain evidence to deal with financial issues.
8. In response Ms Vidal submitted that this was more than just a disagreement with the findings, it is also about the approach of the judge to the evidence overall.

Discussion and conclusions

9. Ms Vidal did not point to any relevant evidence which the judge failed to take into account or to any irrelevant evidence which the judge gave

weight to in reaching his conclusions. The judge undertook a proper assessment within Article 8 through the prism of the Immigration Rules.

10. In my view it is clear that the judge reached findings at paragraph 22 that were open to him. Contrary to the assertion in the grounds, the judge was not making comment as to the validity of the marriage itself, but pointing to inconsistencies in relation to the marriage ceremony which are capable of going to the credibility of the parties.
11. At paragraph 23 the judge observed that there was little evidence of pre-refusal contact and rejected the explanation that the Appellant lost his phone and did not replace it at that time. The judge also pointed to an inconsistency between the evidence of the Appellant and the Sponsor, that they speak to each other for hours each day whereas the call records show that many of the calls are very brief or the subject of no contact. These conclusions were open to the judge on the evidence before him
12. The judge made observations at paragraph 24 in relation to an inconsistency between the evidence of the Appellant and Sponsor as to who paid for any visits to Pakistan. Whilst acknowledging the difficulties of getting leave to travel to Pakistan with two jobs, the judge noted that the Sponsor had given up his second job in March 2015 and noted that there was no evidence of a visit since then. It was open to the judge to make observations about the lack of visits in terms of his assessment of the genuineness of the relationship.
13. The judge did acknowledge that the Appellant had sought to expedite the hearing but, for the reasons given at paragraph 24, did not attach significant weight to that factor in terms of his assessment of the genuineness of the relationship. This finding was open to him on the evidence.
14. At paragraph 25 the judge made observations in relation to other motives for post-refusal contact and those observations and conclusions were open to the judge.
15. I therefore conclude that the judge's findings in relation to the genuineness of the marriage were open to him on the basis of the evidence before him. Those conclusions were not irrational or perverse. The grounds have not been made out in this regard.
16. At paragraph 26 the judge records a number of concerns in relation to the financial evidence before him. It was open to the Appellant's representative to seek an adjournment of the hearing had they been unable to deal with the concerns raised at the hearing, as set out at paragraph 9 of the decision, but they did not do so. It was open to the judge to make those observations in the circumstances. In any event, given my findings in relation to the conclusions about the genuineness of the marriage, I am satisfied that these matters do not undermine the decision in relation to the principal matters and have no material effect on the overall decision.

Notice of Decision

The decision of the First-tier Tribunal does not contain a material error of law.

The decision of the First-tier Tribunal shall stand.

No anonymity direction is made.

Signed

Date: 4th October 2017

Deputy Upper Tribunal Judge Grimes

TO THE RESPONDENT
FEE AWARD

There is no fee award as the appeal has been dismissed.

Signed

Date: 4th October 2017

Deputy Upper Tribunal Judge Grimes