



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

Appeal Number: HU/26227/2016

THE IMMIGRATION ACTS

**Heard at Field House
On 8 February 2018**

**Decision & Reasons
Promulgated
On 26 April 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE DAVEY

Between

**MRS VELMA SHARON WHYTE
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

ECO - SHEFFIELD

Respondent

Representation:

For the Appellant: Ms U Dirie, counsel instructed by Migrant Law Partnership
For the Respondent: Mr E Tufan, Senior Presenting Officer

DECISION AND REASONS

1. The Appellant a national of Jamaica, date of birth 27 February 1963, appealed against the ECO's decision, dated 25 October 2016, to refuse entry clearance with reference to paragraph EC-P.1.1. of Appendix FM. The appeal by way of an Article 8 ECHR human rights claim was considered by First-tier Tribunal Judge Beg who on 12 October 2016

dismissed the appeal. Permission to appeal was given by First-tier Tribunal Judge Grimmett on 13 November 2017 and the Respondent made a Rule 24 response on 21 December 2017.

2. The grounds of appeal asserted that amongst other things the Judge had failed to have regard to supporting evidence contained within the Appellant's bundle (AB62-68). Other grounds were raised and essentially the gravamen of the complaint is that the Judge was essentially requiring photographic evidence of the Appellant and Sponsors being together to demonstrate that it was a genuine and subsisting relationship. It is clear that under the requirements of Appendix FM paragraph E-ECP.2.6. that the Appellant and the Sponsor must be in a genuine and subsisting relationship or as it is otherwise sometimes expressed have the necessary intention to remain together as husband and wife and intend to live together permanently in the UK (paragraph E-ECP.2.10. of Appendix FM).
3. Ms Dirie who did not appear before the Judge properly indicated that the point relating to supporting letters and the contents of tab 62 to 68 were addressed by the Judge; essentially in paragraphs 12 to 13 of the decision. It is also clear that the Judge was given an explanation by the Sponsor as to his abilities to take photographs or lack of interest in taking photographs and his claim as to why there were limited use of photographic evidence obtained by use for example on his telephone. The Judge noted those matters and ultimately concluded with reference to the wedding on the same evidence was before me today:-

"I find that whilst there photographs of the couple's wedding in Jamaica, there are no photographs in the two years that they claimed they knew each other and were in a relationship together."

The Judge considered the evidence of the Appellant's written statement including her account of their relationship and concluded:-

"I find that the Sponsor gave no credible explanation in cross-examination as to why there are no photographs of the couple

going to various social events or any evidence from friends about their relationship.”

In addition in relation to evidence being considered from Ms Tanya Osborn, a friend of the Appellant, the Judge said:-

“However, I find that she (Tanya Osborne) was unable to produce any photographs of social events with the couple when the Appellant was in the United Kingdom.”

4. It is clear that evidence of continuing devotion as might be expressed by the parties is an aspect of the evidence that may be sufficient to establish the necessary intention. It is also clear when the evidence was that they had known each other from about 2013 and had got together later than that, the Judge was entitled to ask whether there were photographs which might evidence that relationship, their affection and so forth. Plainly the Judge could not make the existence of photographs determinative ultimately of the issue of whether there was a genuine relationship and the parties intended to live together permanently. The Judge at paragraph 13 makes reference to evidence concerning the Appellant’s activities involved in church activities including fund raising and noted that there were no photographs of her undertaking any of those activities.
5. Ms Dirie says that the Judge was effectively demanding photographs at every single opportunity of every event involving the Appellant and requiring evidence to establish the relationship. I disagree with the level at which she puts this matter. It seemed to me that the Judge was using the absence of photographs as an indicator, but not determinative, of the relationship. The Judge took the view that it was not a genuine relationship and that that was a view of one of the issues with which the Judge was entitled to make. I do not regard the Judge’s conclusions looking at the evidence overall, reading the decision as a whole as demonstrated that the Judge was not making photographs a requirement: Rather she was assessing the totality of the evidence. I might well have reached a different decision on this evidence but that is not my role now. It is the

question of whether or not the Judge made a material error of law not whether I would have reached a different decision.

6. The Judge has fairly comprehensively addressed in the decision the evidence that was advanced about the genuineness of the relationship and, it follows from that, their intentions to remain together permanently. The Judge concluded that that case had not been made out on the evidence before her. Accordingly that finding is not demonstrably showing in the error of law nor is it perverse or irrational.
7. For these reasons therefore I conclude that this is not a decision where it is appropriate for me to interfere with the Judge's findings in this matter. It is unfortunate I am sure so far as the Appellant is concerned that she is not being reunited with her partner but that is a matter for further consideration and advice on the evidence that can be produced. A further application could be made with better evidence at a later date. That is a matter for others to deal with and for the Appellant and Sponsor to be advised upon.
8. For these reasons therefore I conclude the Original Tribunal made no arguable error of law.

DECISION

The appeal is dismissed.

ANONYMITY

No anonymity order was made nor is one required or appropriate.

Signed

Date 20 March 2018

Deputy Upper Tribunal Judge Davey

TO THE RESPONDENT
FEE AWARD

If a fee was paid the appeal has failed and in the circumstances so too it is not appropriate for any fee award to be made.

Signed
Deputy Upper Tribunal Judge Davey

Date 20 March 2018