



IAC-FH-CK-V1

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

Appeal Number: OA/00836/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 14th September 2015**

**Decision & Reasons Promulgated
On 24th September 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE DAVIDGE

Between

ENTRY CLEARANCE OFFICER - DHAKA

Appellant

and

**MRS SHAHANA KHATUN
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

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

For the Respondent: Mr M A Kalam, Kalam Solicitors

**DECISION AND REASONS
EX TEMPORE JUDGMENT**

1. The Appellant is a Bangladeshi national born on 15th September 1964. On 11th February 2015 Judge Paul of the First-tier Tribunal allowed her appeal against a refusal to grant her entry clearance as a partner under Appendix FM. The Appellant married her British Sponsor on 16th March 2012 and that was the relationship upon which she relied. The Entry Clearance Officer now has permission to appeal against that decision.

2. The only matter in issue before Judge Paul was whether this was a genuine and subsisting marriage. The Entry Clearance Officer had taken the view that it was not, essentially because, as stated in the reasons for refusal dated 14th November 2013,
 - (i) although the Sponsor was in Bangladesh that did not mean that he had in fact married the Appellant
 - (ii) having married in March 2012 and the Sponsor remaining until May 2012 only three photographs of the couple together over that period of time had been submitted.
 - (iii) there were no photographs of the actual marriage in March 2012.
 - (iv) there was an absence of post-marriage contact between the Appellant and his wife. The application was made on 25th August 2013 and it was supported by remittances going back some eight months as well as phone cards there was nothing earlier, and the Sponsor had not visited the Appellant in Bangladesh since the marriage.
3. In Judge Paul's determination the evidence is clearly set out including the evidence that the Sponsor had visited the Appellant following the refusal and stayed in Bangladesh on that occasion for some three months. The judge notes the competing submissions and records, having heard oral evidence from the Sponsor, Mr Abdus Salam that he found him credible. His oral and witness statement evidence was corroborated both by the remittances and the evidence of telephone contact, the subsequent visit, the making of the application and the Sponsor's attendance at court.
4. The judge correctly self-directs in respect of Goudey (subsisting marriage - evidence) Sudan [2012] UKUT 00041 (IAC). That of course is based on the case of Naz (subsisting marriage - standard of proof) Pakistan [2012] UKUT 00040 (IAC) in terms of the evidence available upon which to make a decision, as well as the relevant date, standard and burden of proof. Having taken into account all of the evidence and the submissions, correctly self-directed the judge concludes that the marriage was genuine and subsisting as at the date of decision in November 2013.
5. The Entry Clearance Officer appeals that decision on the ground that the Tribunal's findings are wholly inadequate, from which I infer that the ground is that the reasoning is inadequate. In particular the Entry Clearance Officer takes issue with the fact that there is an absence of evidence from the Appellant, asserts the judge has incorrectly taken into account postdecision evidence as follows:

"Whilst postdecision evidence may demonstrate a relationship is subsisting, this is only where there is evidence pre-decision to support this. In the Appellant's case there is a lack of pre-decision evidence and without this there is no guarantee that the postdecision evidence now submitted has not been done merely to bolster their appeal."
6. On their face the grounds are incoherent in the context of a decision which follows self-direction in accordance with the relevant jurisprudence and

statutory provisions and which resulted in a finding which was open to the judge on the evidence.

7. Before me Mr Duffy very wisely relied on the grounds and did not seek to address me further.
8. Contrary to the assertion made in these grounds oral evidence is evidence, and it is not an error of law for a judge to believe a witness, and that is precisely what has happened in this case.
9. The grounds do not identify an error of law. Challenges to credibility findings can only succeed if an error of law is identified, and on the grounds as they are drafted before me I am satisfied that no error of law is revealed.

Notice of Decision

Accordingly the decision of the First-tier Tribunal allowing the appeal on Immigration Rules grounds stands.

Signed

Date

Deputy Upper Tribunal Judge Davidge