Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: OA/06019/2014**

THE IMMIGRATION ACTS

Heard at Glasgow	**Decision and Reasons promulgated**
On 24 November 2015	**On 8 December 2015**

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

NASIR MIAH

Appellant

and

ENTRY CLEARANCE OFFICER, DACCA

Respondent

Representation:

For the Appellant: Mr H Ndubuisi, of Drummond Miller, Solicitors
For the Respondent: Ms S Saddiq, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant is a citizen of Bangladesh, born on 6 April 1967. His wife and sponsor is a UK citizen, born on 10 March 1957. By determination promulgated on 5 March 2015 First-tier Tribunal Judge Clough dismissed his appeal against refusal of entry clearance as a spouse.

2. The appeal to the Upper Tribunal is taken on the following grounds:

...

2 The Tribunal found that the appellant's marriage is not subsisting and refused the appeal.

3 … The judge relied primarily on findings in respect of the sponsor's credibility; previous findings of Judge Blair in a previous determination, and additional findings of fact by the judge.

4 The judge erred in the approach she applied … failed to take into account material considerations; failed to provide adequate reasons for rejecting the appellant's explanations/evidence; and made findings of fact not supported by evidence, and which are simply speculative.

5 At paragraph 17 … Judge Clough adopted the findings of Judge Blair without providing adequate reasoning … the only reason … for refusing to accept the sponsor's evidence, addressing issues raised in the previous determination, was simply that "*the judge was not satisfied that the sponsor's vague and evasive evidence about the appellant's circumstances at the previous hearing can be so easily dealt with by the sponsor's comment about her evidence then."* The proper procedure would be for the judge to consider the explanation provided by the appellant and not simply dismiss this in the way she did. By failing to take into account the appellant's [sponsor's] clear explanations the judge … erred in law.

6 The judge made a finding that the difficulty the sponsor was having in explaining matters or remembering some details … was not as a result of her bad memory simply because she was able to provide information about her financial circumstances. This is simply an inadequate reason to reject medical evidence by medical professionals that the sponsor has significant memory problems. The fact that the sponsor could provide information on certain aspects and not others does not detract from the medical evidence, and therefore the judge erred in law in that she did not provide adequate reasons for rejecting or not considering the evidence of the medical professionals who advised that the sponsor was suffering from poor memory and other health problems.

7 Specifically the judge found at paragraph 14 and again at paragraph 22 that the 10 year disparity [in age] between sponsor and appellant is "*unusual given the matrimonial customs of the Bangladeshi community … and would also want an explanation why he married the sponsor when she was past child bearing age, an unusual situation in this community and if he was previously married in Bangladesh"* … The judge was speculating as to the matrimonial customs of the Bangladesh community, as there was no evidence whatsoever … if the Tribunal was concerned about this matter [it] should have been put to the sponsor and evidence led. By relying on a speculative factor the judge significantly erred in law. This is very material as it weighed heavily on the judge's mind on reaching the conclusions she did.

8 The judge also failed to take into account the fact that the appellant has now made 5 applications in the past 8 years, over which period there has been evidence of relationship between the appellant and sponsor … the judge failed to assess a very relevant consideration ie the couple's continued devotion to one another after all these years.

3. Mr Ndubuisi submitted further as follows. *AA (Somalia) v SSHD* [2007] EWCA Civ 1040 supports the proposition that a judge has to make an independent decision on the evidence before her, and it would not be right simply to rely slavishly on a decision by someone else. The judge fell into that error. At paragraph 15 the judge found that the sponsor's benefit claim as a single woman was "conclusive evidence" that she did not consider her second marriage to be anything other than a paper

transaction for the appellant's convenience. That conclusion was not justified. The sponsor had been claiming as a single person before the marriage and the appellant was removed only 8 months into the marriage. The sponsor was illiterate and incapable of taking care of her own day to day affairs, as borne out by medical evidence. Although it was accepted that the sponsor should have advised the authorities of her married status and that what she did was unlawful, it was nothing out of the ordinary and did not imply that the marriage was other than genuine and subsisting. The evidence on which the judge relied for that conclusion simply did not support it. There had been abundant evidence of contact: the sponsor's yearly travel to Bangladesh, photographs of both together, telephone communications, and money transfers. The judge did not take into account the medical evidence which bore on the sponsor's ability to give oral explanations. The judge simply relied on previous adverse decisions by two judges (Judge Blair and Judge Deans). There had been clear evidence of the couple living together in 2002 to 2003 in Birmingham after the marriage. There was a joint bank account. The evidence had not been properly evaluated and viewed holistically. A decision should be substituted in favour of the appellant.

4. Mrs Saddiq submitted that the grounds of appeal are only disagreement on the facts. The judge found that there is some relationship between appellant and sponsor, as is obviously so, but that it did not constitute a genuine subsisting marriage. She gave several good reasons for not being satisfied by the evidence for the appellant. There had been no statement from him. The grounds were contradictory as to whether the sponsor was to be taken as a hopeless witness, or as one who gave clear and reliable explanations. The medical evidence did not support the proposition that she has any difficulty in giving oral evidence. The fact that she is illiterate is beside the point. The judge was entitled to find it highly significant that the sponsor was a clear witness on some matters, in particular on her own financial affairs, but inconsistent and evasive on others. The grounds criticised the judge for taking account of the cultural background, which ironically was a point more often levelled against judges. The grounds did not suggest that the judge went wrong in her understanding of the cultural background. She had not speculated, but assessed the background correctly, on a point well within her scope from knowledge of similar cases.

5. (Mr Ndubuisi confirmed that ground 5 is intended to refer to "the sponsor's clear explanations" not the appellant's. The presenting officer was correct in saying that there was no statement from the appellant before the Tribunal.)

6. I indicated that the appeal to the Upper Tribunal would not succeed.

7. The one point which seems to me to be well taken on behalf of the appellant is that the expression at paragraph 15 of "conclusive evidence" goes too far. Mr Ndubuisi resisted my suggestion that if the judge had said, for example, "strong evidence", that could not be quarrelled with; but in my opinion a finding to that extent would have been plainly justified.

8. Although the word conclusive might be wrong, that is far from being the only significant matter counting against the appellant. In that light it is a fairly minor and rather semantic point. Otherwise, the grounds and submissions for the appellant disclose no legal error. The judge did not slavishly follow previous determinations, but correctly took them as her starting point and then examined the evidence before her. The medical evidence does not say that the sponsor lacks day-to-day comprehension of her own affairs. The grounds try to have this both ways, suggesting that the judge should have made allowance for her being a mentally feeble witness, and at the same time that the judge erred by failing to take into account her clear explanations. The grounds are only extended disagreement on the facts.

9. The determination of the First-tier Tribunal shall stand.

10. No anonymity direction has been requested or made.

30 November 2015
Upper Tribunal Judge Macleman