



**Upper Tribunal
(Immigration and Asylum Chamber)
HU/08382/2015**

Appeal Number:

THE IMMIGRATION ACTS

Heard at UT(IAC) Birmingham

Decision & Reasons

On 18 July 2017

Promulgated

On 24 July 2017

Before

UPPER TRIBUNAL JUDGE KEBEDE

Between

TAHMINA BEGUM JUMA

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr R Sharif of Fountain Solicitors

For the Respondent: Mr D Mills, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Bangladesh, born on 2 August 1995. She has been given permission to appeal against the decision of First-tier Tribunal Judge Ford dismissing her appeal against the respondent's decision to refuse her application for entry clearance to the UK.

2. The appellant applied for entry clearance as a partner under Appendix FM of the immigration rules. Her application was considered under paragraph EC-P.1.1 of Appendix FM.

3. The respondent refused the application on 9 September 2015 on the basis that she was not satisfied that the appellant's relationship with her sponsor

was genuine and subsisting and was not satisfied that the appellant intended to live together with the sponsor permanently in the UK. The respondent noted that the appellant had stated that she met and married the sponsor in February 2014 and that they lived together in Bangladesh for a period after the marriage, but that the photographs submitted only showed them together at the wedding ceremony. There was no evidence of time spent together after the marriage. Whilst it was noted that the appellant claimed to maintain contact with the sponsor by telephone and skype, the record of messages sent did not readily identify the sponsor. The respondent noted further that the application form referred to the appellant's husband suffering from paranoid schizophrenia and to him being under the care of a mental health team. The respondent considered that it was not apparent from the application form, which appeared to have been completed by someone else, what was the appellant's understanding of her husband's care requirements. The respondent refused the application under paragraph EC-P.1.(d) of Appendix FM.

4. The appellant appealed against that decision and her appeal was heard by First-tier Tribunal Judge Ford on 10 October 2016. The judge heard from the sponsor who gave oral evidence before her and she considered him to be an honest witness. The judge recorded the sponsor's evidence that he had not spoken to the appellant before he met her for the first time one week prior to their wedding. The marriage had been arranged by the sponsor's mother and the appellant's mother at the instigation of the sponsor's uncle. The arrangements for the wedding had been made by his uncle. The sponsor's solicitor had completed the application form on the information given to him by the sponsor and after visiting the appellant in Bangladesh in August 2015. The sponsor last visited the appellant on 23 October 2015 after her application as refused.

5. The sponsor said that he and the appellant were in regular contact by Skype and telephone calls and the documents produced were communications from him to the appellant. The judge noted that there was some limited evidence of money transfers which the sponsor said were gifts from him. The sponsor explained that he had been diagnosed in 2009/2010 and suffered from paranoid schizophrenia and psychosis. He had told the appellant that he took an injection monthly for his head. His wife did not know the meaning of psychosis but she knew there was something wrong with him as he had told her. She had told him that he should stop taking the injections, but he said that he would continue with the injections. His condition was controlled by the medication, which consisted of the injections and tablets. The judge noted that the sponsor had been awarded the higher rate care component for help with personal care and the lower rate mobility component for help getting around, up until 20 July 2016. The sponsor explained to the judge that the only care he needed was reminders about his personal care, such as brushing his teeth and washing himself.

6. The judge had regard to a letter from the sponsor's GP, a statement from the appellant, Lycamobile records, a Lebara history document and Skype records. The judge had no doubt that the sponsor was committed to his relationship with the appellant but was not satisfied that the appellant was, either at the date of decision or currently, committed to the relationship in the

long-term rather than committed to securing entry clearance to the UK. The judge was concerned that the appellant had not been told that the sponsor suffered from paranoid schizophrenia and was particularly concerned that she had no understanding of the seriousness of his diagnosis and had no real interest in the sponsor or his health as she had suggested that he stop taking his medication. The judge considered that the evidence of contact between the sponsor and appellant was poor and she was not satisfied that they were in communication with each other in a manner consistent with a committed couple who had been married for two years. The judge was not satisfied that the relationship was genuine and subsisting or that the appellant intended to live permanently with the sponsor after her arrival in the UK. The judge was not satisfied that the appellant and sponsor shared family life together and was not satisfied that Article 8 was engaged. She accordingly dismissed the appeal in a decision promulgated on 1 November 2016.

7. Permission to appeal to the Upper Tribunal was sought by the appellant on the grounds that the judge had been wrong to conclude that the marriage was not subsisting. It was asserted in the grounds that the judge had attached too much weight to the fact that the sponsor had only told the appellant that he was suffering from psychosis and that the appellant would not have understood the technology and the judge had failed to consider the cultural aspects of the appellant living in a rural village. The grounds referred to Goudey (subsisting marriage - evidence) Sudan [2012] UKUT 00041 in asserting that the evidence of telephone calls was capable of being evidence of the intentions of the parties.

8. Permission was granted on 25 April 2017 "*with some hesitation*".

Appeal Hearing

9. Mr Sharif submitted that the judge had failed to consider the cultural context of the case in that this was an arranged marriage where the appellant, who was a village girl from rural Bangladesh, had some understanding of the sponsor's condition. The condition was under control and there was no need for her to understand all the details. The judge had failed to give adequate weight to the fact that the sponsor had been to see the appellant in Bangladesh in October 2015 after her application was refused. There was evidence of contact through Skype and telephone calls as well as money transfers and therefore all the relevant evidence was there. The judge was asking for more than that which the sponsor was able to supply.

10. Mr Mills submitted that Goudy and GA ("Subsisting" marriage) Ghana * [2006] UKAIT 00046, the cases relied upon by the appellant, were only a starting point when there was nothing out of the ordinary about a case, but in this case there was something out of the ordinary. The judge was entitled to have concerns about the health issues involved in the case and the appellant's lack of knowledge about her husband's condition some two years after the marriage. The judge was concerned that the appellant had not properly consented and that, once she became fully aware of the situation, she would not intend to stay with the sponsor. Such concerns were rational and open to the judge, particularly when she had rejected the claim that the sponsor's

condition was controlled and that he only needed reminders as to his personal care. The judge was concerned that there had been a lack of disclosure to the appellant and that was sufficient to outweigh the supporting evidence in the form of telephone records.

11. Mr Sharif responded by reiterating the points previously made.

Consideration and findings

12. I find myself entirely in agreement with Mr Mills, that this was not a case where the judge, contrary to the findings in Goudey, found against the appellant simply on the basis of the evidence of telephone calls and contact being insufficient to corroborate the relationship. It is relevant to have regard to paragraph (iii) of the head-note to Goudey, which states that “*Where there are no countervailing factors generating suspicion as to the intentions of the parties, such evidence may be sufficient to discharge the burden of proof on the claimant.*” The point being made by Mr Mills was that, in this case, there were other countervailing factors and I agree that that is the case.

13. The concerns that the judge had, in considering the appellant’s intentions, were that she had not properly consented to the situation of living in a committed relationship with the sponsor, owing to a lack of understanding of what would be involved in such a commitment.

14. It is asserted in the grounds and submitted that the judge, in making the findings that she did, had failed to consider the circumstances of the relationship in its proper cultural context, on the basis that the appellant was a girl from a rural village in Bangladesh and would not be expected to understand, and would thus not need to be told, the full details of her husband’s condition. It is submitted that the appellant had no need to know any more than she did, as the sponsor’s condition was being controlled by his medication and all that was needed of her was to remind him about his personal care.

15. However, as seen from the judge’s observations and findings at [30], the judge plainly had full regard to the cultural aspects of the case and accepted that in an arranged marriage it was not surprising that the appellant should have such little knowledge about the sponsor. Accordingly that was clearly a matter that the judge took into account. What the judge was particularly concerned about, however, was that the sponsor’s condition required far more from the appellant in terms of care and support than she understood. She was concerned that the appellant had not been provided with an accurate account of her husband’s condition and what would be required of her in terms of care and support.

16. The judge noted that, some two years after the marriage, the appellant considered that her husband’s illness did not require day-to-day care and that all he needed was a stable and happy environment and for her to ensure that he had hot meals at appropriate times, as stated in her statement recorded at [22] of the judge’s decision. The judge, for reasons properly given at [19] did not accept that the sponsor required such a low level of care. At [30] she found

that crucial information had been withheld from the appellant by the sponsor and his parents about the full extent of the care he required and she noted, further, at [32], that there was in fact no evidence to support the claim that the sponsor's condition was under control. The judge was also particularly concerned, at [27], that the appellant considered that the sponsor should simply stop taking his medication, showing a complete misunderstanding of the extent of his condition, as well as a lack of real interest in him or his health.

17. On the basis of the lack of disclosure to the appellant, and her lack of comprehension, of the extent of the sponsor's condition, it seems to me that the judge quite reasonably had concerns about the relationship. The judge had full regard to the evidence of contact and communication, the Skype messages, the money transfers from the sponsor and the visit made by the sponsor, but provided cogent reasons for concluding that that evidence was weak and was not consistent with a committed couple who had been married for a period of two years. In light of the concerns she otherwise had about the relationship, it seems to me that the limited weight that the judge accorded to the evidence of contact was perfectly reasonable in the circumstances. Accordingly I conclude that, for the reasons fully and cogently given, and following a detailed and comprehensive assessment of the evidence, the judge was entitled to reach the adverse conclusions that she did about the relationship between the appellant and the sponsor and about the appellant's intentions as regards living together permanently in the UK. The judge was entitled to conclude that the refusal of entry clearance was not in breach of the appellant's or sponsor's Article 8 human rights and to dismiss the appeal on the basis that she did.

18. I find no errors of law in the judge's decision. I uphold the decision.

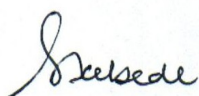
DECISION

19. The making of the decision of the First-tier Tribunal did not involve an error on a point of law. I do not set aside the decision. The decision to dismiss the appeal stands.

Anonymity

The First-tier Tribunal made an order for anonymity. I see no need for anonymity in this case and I therefore discharge the order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed



Upper Tribunal Judge Kebede

Dated: 19 July 2017