



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

Appeal Number: OA/05300/2015

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 4<sup>th</sup> April 2017**

**Decision & Reasons Promulgated  
On 12<sup>th</sup> May 2017**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE SAINI**

**Between**

**IQRA AFZAL  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr Alim of Counsel, RC Immigration Services

For the Respondent: Mr E Tufan, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The Appellant appeals against the decision of First-tier Tribunal Judge Turquet dismissing the Appellant's appeal against the Respondent's decision to refuse entry clearance as the partner of a British citizen pursuant to Appendix FM and Article 8 ECHR. The Appellant appealed against that decision and was granted permission to appeal by Upper

Tribunal Judge Kebede. The grounds upon which permission was granted may be summarised as follows:

“There is arguable merit in the assertion in the grounds that the judge arguably failed to take account of evidence showing that the telephone number called by the Sponsor was the Appellant and thus arguably erred in her assessment of the contact between the Appellant and Sponsor, which then arguably infected her findings on the relationship between the Appellant and Sponsor. The grounds are arguable.”

I was provided with a Rule 24 response from the Respondent which was considered by all parties before the hearing commenced.

### **Error of Law**

2. At the close of submissions, I indicated I found an error of law such that the decision should be set aside, but that my reasons would follow, which I shall now give.
3. The grounds are somewhat verbose in their nature and craftsmanship but in essence the complaint boils down to the lawfulness of the First-tier Tribunal’s assessment of whether the relationship between the Appellant and Sponsor was genuine and subsisting. The Appellant’s representatives rely upon the authority of *Goudey (subsisting marriage - evidence) Sudan* [2012] UKUT 00041 (IAC) which confirms as follows in the first three headnotes:
  - “i) *GA (“Subsisting” marriage) Ghana \* [2006] UKAIT 00046 means that the matrimonial relationship must continue at the relevant time rather than just the formality of a marriage, but it does not require the production of particular evidence of mutual devotion before entry clearance can be granted.*
  - ii) *Evidence of telephone cards is capable of being corroborative of the contention of the parties that they communicate by telephone, even if such data cannot confirm the particular number the sponsor was calling in the country in question. It is not a requirement that the parties also write or text each other.*
  - iii) *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.”*
4. As may be seen from those headnotes, the relationship between the Appellant and Sponsor would need to be more than a mere formality of a marriage and does not require the production and particular evidence of mutual devotion before entry clearance can be granted. To that extent I note the First-tier Tribunal’s criticism of the lack of evidence produced by the Appellant. However, that criticism is not entirely correct given that there are photographs which I have been shown in the Appellant’s bundle

before the First-tier Tribunal which do in fact demonstrate the Appellant and Sponsor being seen together at their marriage and at the time of their reception and also at the time of their first child being but a baby (all of which may be seen at pages 294 through to 304 of the Appellant's bundle). I note in particular that there is a photograph of the Appellant and the Sponsor and their young child at pages 299 in the bottom left hand corner (which is upside down unfortunately) and also, for example, on page 300 and 301.

5. Whilst the First-tier Tribunal Judge criticised the Appellant's evidence for not showing that calls were made to the Appellant specifically, there was also evidence in the Appellant's bundle in the form of a "chat history" at pages 178 to 292 which, to my view, is more informative and of greater assistance than a list of phone records as it shows typical conversations between the couple, and reveals the mutual affection and devotion between the Appellant and Sponsor not to mention the usual "ups and downs" one might expect to see of a couple living their first few years of their marriage in a long distance relationship by virtue of their circumstances. I also note that the chat contains photos of the Appellant's and Sponsor's child that were taken and sent to the Sponsor in the UK, including sentiments such as the Appellant saying she misses the Sponsor and vice versa.
6. I also note that there were four visits made by the Sponsor to the Appellant after his marriage to the Appellant which were reflected in the chronology at the start of the Appellant's bundle which was also before the First-tier Tribunal and indicate that the visits were made on 5<sup>th</sup> October 2013 (for an unknown duration), 2<sup>nd</sup> July 2014 through to 7<sup>th</sup> August 2014, 26<sup>th</sup> June 2015 through to 23<sup>rd</sup> July 2015 and finally from 5<sup>th</sup> June 2016 through to 12<sup>th</sup> June 2016. Albeit these visits preceded the visa application and were not post-decision visits, nonetheless they do go towards whether the marriage is one of more than mere formality.
7. I do pause to note however that the presentation of this appeal by the former representatives is far from what one would expect of an entry clearance appeal where important issues of family life are at stake including the entry of the parent to a British child whom, as I understand, remains in Pakistan. I note these concerns as ultimately in my view, it is only after being taken carefully to the material in the Appellant's Bundle to determine omissions made by the First-tier Tribunal - for which I would not lay any blame - am I able to find that there is a material error of law.
8. Consequently, the matter will need to be remade and one would expect the Appellant's new representatives to put within the Appellant's bundle the new evidence that Mr Alim sought to rely upon today but which I was unable to take into account given that it was not before the First-tier Tribunal (that evidence concerning the Appellant being pregnant with a second child of the Sponsor).

9. Finally, I do note one issue which Mr Tufan brought to my attention on behalf of the Respondent, namely that the application was also refused due to concerns over an absence of evidence regarding accommodation in the UK, however this is something which the First-tier Tribunal failed to make findings upon, albeit there was evidence of a tenancy agreement inspection report for two addresses which can be seen in the Appellant's bundle along with a letter from the landlord at pages 40 to 68. This is also an issue upon which findings are required and as such a further error of law.
10. In light of the above findings, I set aside the decision and findings of the judge entirely.

**Notice of Decision**

11. The appeal to the Upper Tribunal is allowed.
12. The making of the previous decision involved the making of an error on a point of law and is set aside.
13. The appeal is to be remitted to the First-tier Tribunal to be heard by a differently constituted bench.

No anonymity direction is made.

Signed

Date 11/05/17

Deputy Upper Tribunal Judge Saini

