



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

Appeal Numbers: OA/07841/2015  
HU/07061/2016

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 29<sup>th</sup> November 2017**

**Decision & Reasons Promulgated  
On 13<sup>th</sup> December 2017**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE PARKES  
THE HONOURABLE LORD MATTHEWS  
(SITTING AS AN UPPER TRIBUNAL JUDGE)**

**Between**

**MRS ALIYA BIBI  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mr D O'Callaghan, Counsel,  
instructed by Fast Track Immigration Services  
For the Respondent: Mr Chris Avery, Home Office Presenting Officer

**DECISION AND REASONS**

1. This is an appeal by Aliya Bibi against two decisions to refuse her entry clearance to the UK as a spouse. The appeals had an OA and an HU number and was heard at Hatton Cross on the 11<sup>th</sup> January this year by Judge Pedro. The critical decision or refusal notice had been issued on the 12<sup>th</sup> February 2016 and so it is clear that there had been the best part of a year in which the case could be prepared.

2. The Judge gave a lengthy and detailed decision. He began by setting out the issues that he believed had to be decided, whether or not the marriage was genuine and subsisting, the question of employment and the ability to maintain the Appellant and the accommodation that was available. Of course the primary and first issue that he would have to decide would be that of whether the marriage was genuine and subsisting.
3. The Judge dealt with that from paragraph 8 onwards. One of the issues that arose and concerned him was a lack of documentation that had been provided. It was said before him that Skype call records had been produced to the Entry Clearance Officer but had not been returned. He dealt with that issue at paragraph 13 of his decision where he noted that absence and said with regard to their not being returned to the Appellant if this were the case he "... could see no reason why the sponsor could not have reproduced/reprinted the evidence for the purposes of the appeal hearing before me". He went on to say that Mr Irfan had indicated during his evidence he would have been able to do so but for some reason had not bothered. The fact is that the Judge could only have regard to the evidence before him and no such evidence had been produced. We would add this - if we accepted that those records existed we still had no evidence of their contents and any exercise would have been entirely speculative.
4. This was not the only absence of evidence that the Judge had regard to. There were a selection of photocopied telephone cards, he referred to these in paragraph 10. There appeared to be no more than were produced to the Respondent. Those did not identify the persons involved in any conversations or their length although I understand that background evidence can be available.
5. In paragraph 11 the Judge referred to the remittances. It was noted there that remittances could have been printed from the computer as the witness indicated but that had not been done for the purposes of the hearing. We found that explanation unsatisfactory.
6. It is a Ground of Appeal that the Judge erred with regard to the case of Goudey on the issue of the genuine and subsisting nature of the marriage and that the Judge should have had regard to telephone phone cards. The fact that he did have regard to the evidence but it does not necessarily follow that because those cards were produced it inevitably leads to the conclusion that is being forced on or erred on the Judge.
7. The Judge looked at the evidence in the round. He had made reference in regard to the evidence that was missing and concluded, for the reasons that he gave, that the evidence did not show that the marriage was genuine and subsisting. We are satisfied having read paragraphs 8 to 14 that that was the decision that was open to him on the evidence that was presented. There was no error in the approach that he took and accordingly that would have disposed of the appeal in any event.

8. The Judge did go onto consider the questions of maintenance and accommodation and noted correctly with regard to the employment of the Sponsor that there were significant differences; he set those out in paragraph 17. In addition with regard to the accommodation he was faced with a similarly contradictory position whereby it appears that there were overlapping tenancies. At paragraph 19 he noted that there was no corroborative documentary evidence of the payment of rent that could have been produced, and in the absence of that as well as the absence of any evidence that the Sponsor have actually lived in the addresses (whether council tax, utility bills or otherwise), we are not satisfied that he genuinely resided where he had stated.
9. Those findings although not strictly necessary were open to the Judge and having found that the marriage was not genuine and subsisting it follows that article 8 was not engaged considering there was no family life. For those reasons we are satisfied that the Judge did not err in law. The decision was open to him. The decision of the 25<sup>th</sup> January 2017 stand as the disposal of this appeal.
10. We would that the effect of the decision of the Judge was to find that the evidence was insufficient to discharge the burden of proof. The findings did not amount to a positive rejection of the Appellant's case. On that basis it is open to the Appellant to re-apply with evidence that meets the requirements of Appendix FM and Appendix FM-SE and bearing in mind the observations of the Judge on evidence that might assist in supporting any application that is made.

#### NOTICE OF DECISION

The appeal is dismissed.

No anonymity direction is made.

Signed

Date 13<sup>th</sup> December 2017

Deputy Upper Tribunal Judge Parkes