



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: EA/04303/2017

THE IMMIGRATION ACTS

Heard at Field House
On 2nd August 2018

Decision & Reasons Promulgated
On 13th August 2018

Before

UPPER TRIBUNAL JUDGE KING TD

Between

MRS JOYLYN JUANEZA

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms L Turnbull of Counsel instructed by Goscimski & Associates
For the Respondent: Mrs H Aboni, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of the Philippines who in March 2017 applied for a family permit under the Immigration (European Economic Area) Regulations 2016 to come to the United Kingdom to join her husband, who is a Polish citizen exercising treaty rights in the United Kingdom.
2. The respondent refused the application in the decision of 10th April 2017, on the basis that the marriage conducted on 12th December 2016 was one of convenience. In particular it was said that following the marriage there had been no documents produced to demonstrate a genuine subsisting relationship.

3. The appellant sought to appeal against that decision to the First-tier Tribunal. The appeal was considered on the papers on 21st December 2017 by First-tier Tribunal Judge Aujla.
4. With the grounds of appeal as received at Arnhem House on 16th October 2017 there was a bundle of documents containing a number of email messages and Facebook entries. The Judge concluded that that evidence did not demonstrate the genuineness of the marriage but gave little indication why the extensive messages over a considerable period should not have been given some weight in that regard.
5. The Judge noted at paragraph 27 of the determination that no witness statements had been produced by the parties which was found to undermine the credibility of the claim that there was a subsisting relationship. It was also considered that it would have assisted the appellant if the sponsor had asked for an oral hearing. In the event the appeal was dismissed.
6. It is apparent that there were a number of areas of concern which arose in the way in which this matter has come to be dealt with by the Tribunal.
7. On the form IAFT-6 issued on 3rd May 2017 there is an indication that a paper hearing is requested. A letter had been written to the Tribunal by the appellant dated 20th April 2017 stating that a number of documents were to be submitted and submitting some of them. Solicitors acting on behalf of the appellant wrote on 6th July 2017 to ask about the progress of the appeal to be told that that would not be revealed to them until they indicated that they were acting.
8. Of more relevance to the immediate issue was that a much larger bundle of documents was submitted by the solicitors on behalf of the appellant by the Taylor House on 28th December 2017 obtaining a much more detailed set of statements concerning the relationship and containing in particular the witness statements of both sponsor and appellant. It is apparent that that bundle did not find its way for the Immigration Judge and the consideration of the appeal. For a case based upon the papers it was clearly a serious omission.
9. It is apparent from the papers contained in the file that those acting on behalf of the appellant had contacted the Tribunal on a number of occasions seeking clarity as to the progress of the matter. It is far from clear from the papers as to what notification was given to the parties as to the progress of the case. There was however a document issued on 23rd October 2017 to the appellant and to solicitors from the Tribunal requesting that any written evidence and submissions to the Tribunal be made by 19th December 2017. Thus the big bundle of documents to which reference has been made was lodged within that timeframe and therefore clearly should have been taken into account.
10. It has been said that the failure to consider the extra evidence that has been presented has resulted in an unfair hearing in particular the comments as to the absence of witness statements would not have fallen to have been made.

11. In all the circumstances I find there to have been a material error of law as a matter of unfairness. In those circumstances the decision shall be set aside to be remade.
12. An indication has been given that the sponsor would wish to give evidence in support of the application. In the circumstances given the extensive examination in findings of fact that will be required, in accordance with the Senior President's Practice Direction the matter shall be remitted to the First-tier Tribunal for a de novo hearing.
13. For the avoidance of doubt I indicate that the major bundle submitted on 18th December has been handed over in court to the respondent's representative. No doubt any further directions as there may be required will be issued by the First-tier Tribunal in due course. A complete bundle will be required by the Tribunal.

Notice of Decision

The appeal before the Upper Tribunal succeeds to the extent that the First-tier Tribunal decision is set aside to be remade by way of a full hearing also in that Tribunal.

No anonymity direction is made.

Signed



Date 9th August 2018

Upper Tribunal Judge King TD