Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: HU/10219/2016**

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 14th May 2018	**On 22nd May 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE ROBERTS

Between

SABAR GHANI
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

ENTRY CLEARANCE OFFICER

Respondent

Representation:

For the Appellant: Mr D Mold of Counsel
For the Respondent: Ms K Pal, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant, a citizen of Pakistan born 7th November 1989, appeals with permission against the decision of Judge of the First-tier Tribunal Parkes, promulgated on 22nd August 2017 in which he dismissed the Appellant's appeal against the Entry Clearance Officer's decision of 21st March 2016 refusing entry clearance to him as the husband of Shanaz Begum (the Sponsor). The Sponsor is a British citizen. She and the Appellant married in Pakistan on 9th August 2014.

2. The application for entry was refused originally because the Entry Clearance Officer (ECO) was not satisfied on various matters. By the time of the hearing before me however, it was accepted that the only point in issue centred on whether the Appellant

and Sponsor are in a genuine and subsisting relationship within the meaning of the Immigration Rules.

3. It is correct to say that the FtTJ did not accept that the marriage between the Appellant and Sponsor is subsisting. He heard evidence from the Sponsor and her father. In coming to his decision, the FtTJ focused his attention on post-decision evidence which he noted was in the form of phone records and mobile call cards [17][18]. The FtTJ made no reference in his decision to the evidence of a post-decision visit made by the Sponsor when she travelled to Pakistan for two weeks between 29th January and 12th February 2017. This was despite oral evidence from the Sponsor supported by documentary evidence in the form of an airline ticket and photographs showing the couple together. The FtTJ dismissed the appeal.

4. The grounds seeking permission outline the failure to consider material evidence and gives reasons as to why the decision is unsustainable on account of that failure. Permission was granted on the following points:

   - It was arguable that the judge's evidential findings were not sustainable, as being contrary to both the oral evidence given to him at the hearing and the documentary evidence contained in the Appellant's bundle. This was on the basis that no reference was made in the decision to the Sponsor's evidence that she had visited Pakistan to see her husband between January and February 2017.

   - It was arguable that the judge had erred by not clarifying apparent inconsistencies between the Sponsor's statement and her oral evidence, concerning whether a mobile or landline was used for telephone contact.

   - Overall, there was an inadequacy of a structured Article 8 **Razgar** assessment.

5. A Rule 24 response was served by the Respondent, the relevant part of which reads as follows:

   > "The respondent does not oppose the appellant's application for permission to appeal and invites the Tribunal to determine the appeal with a fresh oral (continuance) hearing to consider whether the appellant and sponsor are in a subsisting relationship and consider the sponsor's post decision visit to Pakistan."

UT Hearing

6. Before me Mr Mold appeared for the Appellant, Ms Pal for the Respondent. Ms Pal on behalf of the Respondent confirmed that she accepted that the FtT's decision contained material error of law on account of the failure of the FtT to consider material evidence namely the post-decision visit made by the Sponsor to see her husband in January-February 2017. In my judgment that was a wholly proper concession to make and following it, I informed the parties that I was satisfied that the decision should be set aside in its entirety. I therefore set the decision aside.

Remaking the Decision

7. I enquired of the parties whether there was further evidence to call. Neither party had further evidence. I informed the parties therefore that, subject to anything they wished to raise to the contrary, I could see no reason why I could not remake the decision on the evidence available. I then heard submissions from the parties.

8. Mr Mold on behalf of the Appellant invited me to look at the post-decision evidence contained in the Appellant's original bundle. He submitted that this was admissible evidence in that it cast a light on the subsistence of the marriage. The Appellant and Sponsor were still married and the Sponsor was still supporting the Appellant's application. The marriage had subsisted for almost four years now.

9. He submitted that part of the difficulty which the Sponsor faced in visiting her husband centred on the fact that the Sponsor had had to obtain a second job in order to earn sufficient money, so that the Appellant could meet the financial requirements of the Rules.

10. This impacted upon the Sponsor's ability to get leave to visit her husband. She had however gone to Pakistan in January 2017 remaining there with her husband until 12th February 2017. They spent time together as a married couple, and there was photographic evidence of the visit.

11. So far as the telephonic evidence is concerned, the Sponsor had given evidence of contact between the parties carried out by landline. Again it had to be remembered that because of the hours which the Sponsor worked holding down 2 jobs, there was limited opportunity to 'phone the Appellant. There was no reason to doubt the evidence of contact. The decision of the ECO was disproportionate; the Appellant met the Rules, and therefore the appeal should be allowed.

12. Ms Pal on behalf of the Respondent submitted that the decision of the ECO to refuse was correct at the time. The ECO of course did not have before him the post-decision evidence. She referred to the fact that the Appellant had taken sixteen months from the date of the marriage to submit his visa application. In addition the Sponsor had waited until two and a half years had elapsed, since the wedding ceremony, to visit. Those were factors which she asked that I consider.

13. At the end of submissions I reserved my decision, which I now give with reasons.

Consideration

14. The issue before me is whether I am satisfied that the Appellant has shown that he and the Sponsor are in a genuine and subsisting relationship. I find that the couple are in a subsisting and genuine relationship and I now give my reasons for this finding.

15. There is before me (as there was before the FtTJ) post-decision evidence in the form of a statement made by the Sponsor showing a visit to the Appellant for a period of two weeks. This visit is well documented, with airline tickets provided together with photographic evidence of the couple together. I find this evidence is sufficient to tip

the balance in the Appellant's favour. I note that Ms Pal did say that it has taken a while for the Sponsor to visit, and whilst I agree that there is a time gap in this case, I also accept the Sponsor's explanation for this contained in her witness statement. She has to hold down two jobs in order to sustain the Appellant's requirement to satisfy the financial part of the Rules. Any leave she can take is therefore limited. I accept that explanation. There is documentary evidence to show her application for leave from her employer. It stands to reason that there is an expense in travelling to Pakistan and that she therefore went when she could afford both the time and the expense rings true.

16. There is ample evidence of telephone calls between the couple, and piecing this evidence together I am satisfied that the post-decision evidence casts a light on the genuineness and subsistence of the relationship.

17. The genuineness and subsistence of the marriage was the only matter in issue before me. It follows therefore that I am satisfied that the Appellant meets the requirements of the Immigration Rules.

18. The Appellant's appeal of course is under Article 8 ECHR. I find therefore that the fact that the Appellant meets the requirements of the Immigration Rules, renders the ECO's decision to refuse entry a disproportionate one under Article 8. The correct course therefore is for me to allow the appeal under Article 8 ECHR.

Notice of Decision

The decision of the First-tier Tribunal involved the making of an error of law and I set it aside. I re-make the decision by allowing the appeal under Article 8 ECHR.

The Appellant's appeal is allowed.

I make no anonymity order as there is no public policy reason for so doing.

Signed C E Roberts Date 17 May 2018

Deputy Upper Tribunal Judge Roberts

TO THE RESPONDENT
FEE AWARD

The judge at first instance made no fee order. Given that the information which led to the appeal being ultimately allowed before me was not before the Entry Clearance Officer at the date of decision, I too make no fee order in this case.

Signed C E Roberts Date 17 May 2018

Deputy Upper Tribunal Judge Roberts