



**Upper Tribunal
(Immigration and Asylum Chamber)
HU/10578/2016**

Appeal Number:

THE IMMIGRATION ACTS

Heard at Field House

On 14 March 2018

**Decision &
Promulgated
On 13 April 2018**

Reasons

Before

UPPER TRIBUNAL JUDGE PITT

Between

**RUDOLPH TERENCE ENGLISH
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

ENTRY CLEARANCE OFFICER - SHEFFIELD

Respondent

Representation:

For the Appellant: G Kiai, Counsel instructed by Owens Stevens Solicitors
For the Respondent: Mr D Clarke, Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal against the decision promulgated on 19 July 2017 of First-tier Tribunal Judge B A Morris. The decision dismissed the appeal against refusal of entry clearance as a partner under Appendix FM of the Immigration Rules.
2. The appellant is a citizen of Guyana and was born on 21 April 1972. The sponsor in this matter is Mrs Claudette Glasgow, a British citizen, born on 4 October 1947 in Guyana. Mrs Glasgow came to the UK in 1998 with her former husband and subsequently obtained settlement and British nationality.
3. The appellant and sponsor met in Guyana in 2009 when the sponsor returned for a wedding. The couple began a relationship and in the

summer of 2011 the sponsor spent six weeks in Guyana with the appellant. In due course the couple decided to marry and the appellant again returned to Guyana in order for the wedding to take place there. The marriage took place on 1 September 2012, the appellant having been in Guyana for five weeks and returning to the UK a week after the wedding. An application for entry clearance as a partner was made on 8 December 2015. This was refused by the respondent on 23 March 2016.

4. The appeal came before First-tier Tribunal Judge Morris on 4 July 2017. The First-tier Tribunal did not find that the appellant and sponsor were in a genuine and subsisting relationship. That led to the appeal being refused under the Immigration Rules and outside the Immigration Rules under Article 8 ECHR. The reasoning of the First-tier Tribunal is contained in [11]-[20] of the decision, as follows:

“11. I have considered all the evidence in this case, whether or not I specifically refer to it. I have not considered evidence in isolation but by reason of the format of this decision matters are considered in separate paragraphs. I repeat and adopt here any comments upon the evidence and/or submissions which I have set out above.

12. I have borne in mind the requirements of Sections 117A - D of the Nationality, Immigration and Asylum Act 2002 as inserted by the Immigration Act 2014.

13. The short chronology in this appeal appears to be that the Sponsor was born in Guyana on 4 October 1947 and came to the United Kingdom on 18 June 1988 with her then husband. They had four children together but divorced in March 1991. The Sponsor is now a British citizen. In the school summer holidays of 2009, the Sponsor returned to Guyana for a friend's wedding and was introduced to the Appellant at that wedding. The Sponsor returned to the United Kingdom after her six week stay. She returned to Guyana in summer 2011 and spent six weeks there with the Appellant. She returned to Guyana in the summer school holidays in 2012 and married the Appellant on 1 September 2012. The Sponsor then next travelled to Guyana on 22 March 2015 for the funeral of her sister and she returned to the United Kingdom on 7 April 2015. The Appellant and Sponsor have not seen each other since that date. On 7 April 2015 the Appellant made an application for a visit visa which was refused on 15 April 2015. The current application was made on 8 December 2015 and was refused on 23 March 2016 and is the basis of this appeal.

14. Following the marriage on 1 September 2012, no application was made for settlement until 8 December 2015. The appellant gives no explanation for a period of three years passing before the application for settlement was made and I find this undermines the credibility of this claim.

15. On 7 April 2015 the Appellant made an application for a visit visa, stating that he planned to visit for one month. Such application demonstrates the Appellant's intention to return to Guyana. The Appellant has provided no explanation for making an application for a one month visit visa in April 2015 and I find this matter undermines the credibility of his case.

16. Further, the Sponsor stated in oral evidence that she had no knowledge of the Appellant making an application for a visit visa in April 2015. I have no explanation from the Appellant as to why he would not have informed the Sponsor of his application for a visit visa if, as he maintains, they were in regular contact and in a genuine and subsisting relationship. I find this matter undermines the credibility of his claim.
 17. The Sponsor states that following the wedding she became unwell due to an infection in a replacement knee and she remained in hospital for several weeks. In her witness statement she states that in 2013 she went to a firm of solicitors in Birmingham in order to make an application for the Appellant to join her. As I have already stated above, there is no explanation from the Appellant as to why he was not making an application to join the Sponsor or why it was the Sponsor making enquiries about such an application and the Appellant did not appear to be making any enquiries at all. I find this matter undermines the credibility of the Appellant's case.
 18. In the Appellant's bundle are telephone statements from July 2015 and August 2015. There are several copies for each month. These statements show calls to Guyana but to various mobile numbers and to a land line. There are further telephone statements in the Respondent's bundle. In the notice of appeal it is stated that the Appellant is intending to send other documents which were not yet available and such documents would be "proof of ownership of phone numbers in Guyana". Thus, the Appellant was aware of the need to establish the ownership of various telephone numbers in Guyana but at the hearing I had no documents to show ownership of telephone numbers in Guyana. Consequently, I have no documentation with which to identify any telephone calls between the Appellant and Sponsor on the telephone statements. I find this matter undermines the credibility of the Appellant's claim.
 19. In the Appellant's bundle are MoneyGram documents showing money sent to Guyana from the United Kingdom. Of the four post office receipts for MoneyGram transactions, only one is shown as being sent to the Appellant. Two of the four show female names and the fourth transaction does not show the name any recipient. In her witness statement, the Sponsor states that she has been sending money on a regular basis through MoneyGram transfers to the Appellant. The documents before me do not show regular transfers of money, nor do they show regular transfers of money to the Appellant. I find that this matter undermines the credibility of the Sponsor and credibility of the Appellant's claim.
 20. By reason of all the matters set out above, and taking the evidence as a whole, as I do, I find that the Appellant has not shown, on a balance of probabilities, that the relationship with the Sponsor is genuine and subsisting or that they intend to live together permanently in the United Kingdom."
5. At the hearing before me the appellant's grounds were argued on two main bases, the first being that of procedural irregularity and the second

being a failure to take a correct approach to the evidence by way of rationality or adequacy of reasons.

6. The procedural irregularity ground concerned the reliance by the respondent at the hearing on the visit visa application. The respondent's refusal decision had not referred to any such application and it had not been raised at any point in the proceedings prior to the morning of the hearing. The appellant objects to the judge placing weight on a document produced in those circumstances.
7. The difficulty with this ground is that the appellant was represented at the hearing before the First-tier Tribunal and his representative can be taken to have acted appropriately when faced with the respondent seeking to admit this new document. Nothing here indicates that the appellant's legal adviser objected to the admission of the visit visa or to the respondent making adverse submissions on it or to the judge being entitled to consider the document and potentially make adverse findings upon it. Nothing indicates that there was any application or discussion of whether there should be an adjournment in order for the appellant to be able to comment on this document or for the sponsor to be able to do so on more notice. It also cannot be said that the visit visa application was an entirely new matter as regards the appellant as he knew he had made the application and was specifically asked about it at question 28 of his partner entry clearance application.
8. In those circumstances, no procedural irregularity can be said to arise. It was open to the First-tier Tribunal to take the visit visa application into account and to draw an adverse inference from it where the sponsor knew nothing about it when she was at the same time claiming to be in a genuine and subsisting relationship with the appellant; see [16].
9. At paragraph 3 of the grounds the appellant argues that the First-tier Tribunal considered the particular aspects of the evidence in isolation rather than as a whole. That ground is not arguable given that the First-tier Tribunal indicated clearly at [11] that all of the evidence in the case was considered, whether specifically referred to or not and that the evidence was not considered "in isolation but by reason of the format of this decision matters are considered in separate paragraphs". Nothing in the ensuing consideration indicates that the judge did not follow this appropriate self-direction.
10. Further, it is not my view that there is an error of law in the judge's assessment that there was a three year delay in making an entry clearance application for the appellant and drawing an adverse inference from this. The appellant maintains that she visited the appellant for the wedding in 2012, remaining for the majority of the time before the wedding rather than after, being in Guyana for only a week after the marriage itself. Her evidence as to having a knee problem and complications following an operation are certainly a partial explanation but do not cover the entire period between the marriage and the entry clearance application over three years later. The appellant's evidence

about her mobility did not oblige the judge to find that she was unable to travel or could not be expected to do so. The judge was equally entitled to find that, in fact, the appellant was able to travel where she did so for a relative's funeral.

11. Further, the First-tier Tribunal was not obliged to accept the sponsor's unsupported evidence as to having approached a firm of solicitors in 2013 in order to make an application but having been negligently advised by them; see BT (former solicitor's alleged misconduct) Nepal [2004] UKIAT 00311 which sets out:

"If an appeal is based in whole or in part on allegations about the conduct of former representatives there must be evidence that those allegations have been put to the former representative, and the Tribunal must be shown either the response or correspondence indicating that there has been no response."

12. The appellant also objects to the judge's findings at [18] - [19] concerning the telephone statements, calling cards and MoneyGram documents. The appellant maintains that these findings were not permitted by the ratio of Goudey (subsisting marriage - evidence) Sudan [2012] UKUT 00041 (IAC) in which the Upper Tribunal found:

"(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 the parties also write or text each other:"

13. Firstly, that ground has to be seen in the light of the next paragraph of the headnote of Goudey which reads as follows:

"(iii) Where there are no countervailing factors generating suspicion as to the intention of the parties, such evidence may be sufficient to discharge the burden of proof on the claimant."

14. In this case, as above, and as found to be sound above, there were "countervailing factors generating suspicion as to the intention of the parties" and in that context the First-tier Tribunal was not obliged to accept evidence of telephone cards as corroborative of the intervening communication between the appellant and sponsor.

15. Further, the telephone evidence did not show clearly that the sponsor was contacting the appellant Guyana. Her evidence was that she had a number of relatives there. She stated in her witness statement that she would provide details as to which telephone numbers belong to which person but did not do so for the appeal; see [18]. The findings at [19] are unobjectionable where the money transfer documents had, at best, a limited probative value and it was fully open to the judge to find that they did not show that there was a genuine and subsisting relationship between the appellant and sponsor.

16. I accept the appellant's contention that at [15] the judge fails to provide a reason as to why making a visit entry clearance application in 2015 was something capable of showing that the appellant did not intend to live permanently in the UK with the sponsor. That finding is not sufficiently well reasoned. It can be an entirely neutral matter for the appellant to make a visit visa application some nine months prior to making his entry clearance application as a spouse. Also, it cannot be correct that a sponsor based in the UK is not an appropriate person to make enquiries for legal advice in the UK about an application to come to the UK. Therefore, the judge's comment at [17] that the credibility of the case was undermined by the sponsor seeking legal advice rather than the appellant is also an error. It is not my view, however, that when the decision as a whole is read carefully and fairly, that these two points alone are sufficiently material such that the outcome of the appeal could have been different. The judge gave cogent and sustainable reasons on core issues for finding that the marriage was not genuine and subsisting and the force of those reasons is not displaced by these two matters.
17. For all of these reasons, therefore, I do not find an error in the decision of the First-tier Tribunal which shall stand.

Notice of Decision

The decision of the First-tier Tribunal does not disclose an error on a point of law and shall stand.

Signed: 
Upper Tribunal Judge Pitt

Date: 10 April 2018