



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

Appeal Number: EA/00472/2018

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 15 July 2019**

**Decision & Reasons Promulgated  
On 25 July 2019**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE MONSON**

**Between**

**MRS KULSUM SALMAN USSENBAI  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**ENTRY CLEARANCE OFFICER**

Respondent

**Representation:**

For the Appellant: None.

For the Respondent: Mr Lawrence Tarlow, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant has been granted permission to the Upper Tribunal from the decision of the First-tier Tribunal dismissing her appeal against the decision of the Entry Clearance Officers to refuse to issue her with an EEA family permit to enable her to join her sponsor in the UK as his spouse. I was not asked to make an anonymity direction, and I do not consider that such a direction is warranted on the facts of this case.

## **Relevant Background**

2. The appellant is a national of India, whose date of birth is 20 February 1995. On 11 June 2017 she applied for entry clearance as the spouse of an EEA national exercising Treaty rights in the UK. In her application, she said that she had made a previous application for an EEA family permit which had been refused on 24 October 2016 on the ground that her marriage was not believed to be genuine. Her sponsor was an Indian national, whose date of birth was 22 February 1989. They first met on 1 January 2014 in Mumbai, and they had got married in India on 13 February 2015, which was when their relationship had begun. The sponsor had gone to the UK to work on 24 March 2015, and she had last seen him on 12 December 2016.
3. On 27 November 2017 an Entry Clearance Officer gave his reasons for refusing the appellant's application for an EEA family permit. The appellant had evidenced that her husband held a Portuguese passport. He had undertaken an extensive examination of her personal circumstances in accordance with Regulation 7 of the Immigration (EEA) Regulations 2006, and he was not satisfied that there were sufficient grounds for issuing her with an EEA family permit. His reasoning was that she said that her relationship began on 13 February 2015, which was also the day of their wedding. She had provided a marriage certificate for 13 February 2015, but the marriage was not registered until 1 December 2015. She had failed to provide evidence of the wedding ceremony, such as photographs, and she had not provided evidence of communications over a 2-year period.

## **The Hearing Before, and the Decision of, the First-tier Tribunal**

4. The appellant's appeal came before Judge Dineen sitting at Hatton Cross on 4 December 2018. Both parties were legally represented. It is recorded by the Judge that, in support of her appeal, the appellant relied on a bundle of documents extending to 146 pages and on the evidence of her sponsor.
5. In his subsequent decision, the Judge set out his findings of fact at paragraphs [12]-[25]. He concluded, at paragraph [26], that he was not satisfied that the parties were validly married or in a genuine and subsisting relationship.

## **The Hearing in the Upper Tribunal**

6. The appellant's UK sponsor and his nominated legal representatives were informed in good time that the hearing of the appeal would take place at Field House on 15 July 2019. There was no appearance by the sponsor or by a legal representative on behalf of the appellant at the hearing. Perusal of the file revealed that an attempt had been made recently to withdraw the appellant's appeal. Permission had been refused by an Upper

Tribunal Judge on the ground that the appellant was out-of-country, and it was not clear that she had authorised her appeal to be withdrawn.

7. Mr Tarlow conceded that there were errors in the Judge's approach, and he invited me to set the decision of the First-tier Tribunal aside and to re-make it in favour of the respondent.

### **Discussion**

8. Judge Dineen clearly misdirected himself in law by approaching the matter on the basis that he was deciding an application under Appendix FM, as opposed to an application for an EEA family permit under the Regulations 2006. This meant that he did not consider all the evidence within the correct legal framework. He assessed whether the marriage was genuine and subsisting on the basis that the burden rested with the appellant to show that it was, rather than on the basis that the legal burden rested with the respondent to make out that the marriage was one of convenience, as was contended by the Presenting Officer.
9. However, there was another issue, which was whether there was a valid marriage in the first place. As stated by Judge Landes when granting permission, if there was no valid marriage then it mattered little whether the application was one for the Entry Clearance as a spouse, or for an EEA family permit.
10. The Judge gave detailed reasons for doubting whether the marriage in fact took place. He did not, however, address the affidavit evidence referred to in Ground 4. As noted by Judge Landes, he did not mention this affidavit evidence in the list of documentary evidence which he gave at paragraph [9] of his decision.
11. I do not, however, consider that it was incumbent on the Judge to address individually every piece of evidence that was in the appellant's bundle and, in any event, applying **Tanveer Ahmed**, the burden rested with the appellant to show that the evidence from abroad (which included the affidavit evidence) was evidence that could be relied on. The Judge gave adequate reasons for disbelieving the evidence of the sponsor, who gave evidence before him. In the circumstances, he did not err in law in not treating the affidavit evidence from abroad as salvaging the sponsor's credibility on the issue of whether a valid marriage had taken place.
12. Accordingly, for the above reasons, I find that a material error of law has not been established, and I decline to set the decision aside.

### **Notice of Decision**

The decision of the First-tier Tribunal did not contain an error of law such that the decision should be set aside. Accordingly, the decision stands. This appeal to the Upper Tribunal is dismissed.

I make no anonymity direction.

Signed

Date 18 July 2019

Deputy Upper Tribunal Judge Monson