



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

Appeal Number: HU/02132/2018

THE IMMIGRATION ACTS

**Heard at Birmingham Civil Justice
Centre
On 17 June 2019**

**Decision & Reasons Promulgated
On 20 June 2019**

Before

UPPER TRIBUNAL JUDGE LANE

Between

**SHAHNAZ AKHTAR
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

ENTRY CLEARANCE OFFICER

Respondent

Representation:

For the Appellant: Mr Sarwar

For the Respondent: Mrs Aboni, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant was born on 1 January 1982 and is a female citizen of Pakistan. She appealed from abroad against a decision of the Entry Clearance Officer dated 18 November 2017 refusing her entry clearance to the United Kingdom as the spouse of Safir Khan (hereafter referred to as the sponsor). The First-tier Tribunal, in a decision promulgated on 4 September 2018, dismissed her appeal. The appellant now appeals, with permission, to the Upper Tribunal.

2. The appeal before the First-tier Tribunal had been on the papers only. Before the Upper Tribunal, the appellant was represented by Mr Sarwar.
3. The appeal was brought on human rights grounds (Article 8 ECHR). The judge found that, although the appellant and sponsor are legally married, they have no subsisting relationship. Permission has been granted on the ground that the judge did not take account of evidence before him of contact between the appellant and sponsor, in particular evidence from Lycamobile in the form of statements of telephone calls. Mr Sarwar submitted that the appellant's application form showed her mobile phone number whilst the telephone accounts showed regular calls made from the sponsor's own mobile phone. The judge found at [13] that the printouts did not show 'who is calling whom and do not show there were calls passed between the appellant and sponsor.' Mr Sarwar submitted that, had the judge made the link between the two mobile telephone numbers, he may have taken a different view of that evidence on the outcome of the appeal may have been otherwise.
4. Mr Sarwar is correct to say that the documentary evidence (which runs 180 pages) does reveal the link between the two telephone numbers. But I am reminded that this was a paper appeal and the judge had no assistance from a representative or, indeed, sponsor at an oral hearing. Rather, the appellant expected the judge to scrutinise the documentary evidence so thoroughly as to establish a link between the two telephone numbers. The appellant chose to file a witness statement which simply asserts, 'during the periods we have been apart, my husband is kept in regular contact with me by telephone which is clearly confirmed by the submitted Lycamobile statements... see pages 73-141.' No attempt was made to assist the judge by pointing out where in the written evidence the two telephone numbers may be linked to the appellant and sponsor despite the fact that it would have been an easy matter for the appellant to do so.
5. There is an additional problem for the appellant. The telephone records show nothing more than the fact that two telephone numbers were connected on particular dates. They do not show who exactly was speaking during the telephone calls. The judge noted this fact at [13]: 'these could be calls passing between family members.' The appellant and sponsor are related as cousins so the judge's observation was clearly legitimate.
6. Mr Sarwar submitted that the judge had also failed pay proper attention to photographic evidence in the bundle. Many of these photographs appear to relate to the wedding ceremony of the appellant and sponsor about which there is no dispute. They add nothing whatever to the claim of the appellant and sponsor to be in a subsisting relationship at the time, some years later, of the entry clearance application. Although there has been more recent face-to-face contact in 2019, this cannot go to the question of error of law and Mr Sarwar agreed that the judge was correct at [5] to record that the couple had not met since 2016.

7. Ultimately, it is for the Upper Tribunal to determine whether the findings of fact reached by the judge were properly available to him on the evidence. It is for the parties to present evidence in a form which assists the judge in making those findings. I find it difficult to criticise the judge for not linking the mobile telephone numbers in the absence of any assistance from the appellant. However, even if I am wrong in that regard, it was plainly open to the judge to find that a bare record of telephone calls cannot *per se* establish that specific individuals were speaking during those calls and his observation that the calls may be evidence of contact between other family members was, in the context of the family relationship in which this marriage exists, entirely reasonable. In the circumstances, I dismiss the appeal. I will add, however, that the appellant may make a further application and, if she chooses to do so, she may wish to consider the reasons why her last application and the subsequent appeals have failed.

Notice of Decision

This appeal is dismissed.

Signed

Date 17 June 2019

Upper Tribunal Judge Lane