



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

Appeal Number: HU/02508/2018

THE IMMIGRATION ACTS

Heard at Field House

On 8th April 2019

**Decision & Reasons
Promulgated**

On 30th April 2019

Before

**DR H H STOREY
JUDGE OF THE UPPER TRIBUNAL**

Between

**MRS FAIZA KHAN
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

ENTRY CLEARANCE OFFICER

Respondent

Representation:

For the Appellant: Mr A Tinsley, Counsel instructed by jj Law Chambers
For the Respondent: Mr D Clarke, Home Office Presenting Officer

DECISION AND DIRECTIONS

1. The appellant, a citizen of Pakistan, has permission to challenge the decision of Judge Ford of the First-tier Tribunal (FtT) sent on 14 January 2019 dismissing her appeal against the decision made by the respondent on 4 December 2017 refusing to grant entry clearance under paragraphs E-ECP.2.1 to 2.10 of Appendix FM of the Immigration Rules. The judge did not accept that the appellant had shown she was in a genuine and

subsisting marriage with the UK sponsor. Her reasons were set out at paragraphs 19 – 22:

- “19. I do not accept on the evidence before me that as at date of decision or as at date of hearing that this relationship was genuine and subsisting because;-
- (a) The Sponsor’s evidence as to how he and his family knew the Appellant was not consistent. He said that he had come to the UK in 2009 and that his parents knew the Appellant’s family because they were neighbours for 5/6 years in Pakistan. Yet he did not claim any prior knowledge of the Appellant before they were married.
 - (b) The evidence of phone calls between this couple was surprisingly limited. The Sponsor explained that there were few phone calls in June and in August 2017 because the Appellant had moved to live in a mountainous area for those months and internet coverage was poor there. Yet there were more phone calls in May than in either June or August and a long phone call in August was made 3 days after the Sponsor said he arrived to visit the Appellant. He has not produced his passport despite the comments made by the ECM.
 - (c) There was no evidence as to what the couple did together in the course of spending 1 month, 45 days and 53 days together in March 2017, August 2017 and April 2018. The photos in the bundle were referred to as wedding photos and the only photos produced that I was told were taken during a visit after the wedding, were included in the wedding photos in the bundle. I do not find the Sponsor’s explanation that he had another phone and could not access the photos he had taken to be credible given the length of time this couple are supposed to have spent together.
 - (d) I have considered the content of the social media messaging. It does not show any development in their relationship and is limited in frequency as well as in content. There are very few references to family or friends or to what the other person has been doing in the periods between contact.
20. The Appellant has been on notice since the ECM review that the decision was being maintained yet very little effort has been made to produce relevant recent evidence in support of this appeal. The Sponsor told me that he had been spending 30 mins to an hour every day on the phone to the Appellant in the last 5-6 months yet there was no documentary evidence of this. I was provided with a copy of the Sponsor’s flight reservation for 09 January 2019 but still not provided with his passport. I accept that there is another flight reservation in the bundle.
21. The Appellant bears the burden of proof in this appeal. I am not satisfied that the evidence produced is consistent with a genuine and subsisting relationship between the parties. In so concluding I have fully considered the impact of being an arranged marriage and of cultural factors and the distance between the places of residence. The ECO expressed valid concerns and those concerns

were echoed by the ECM. The Appellant has done little to allay those concerns. The sponsor's evidence further damaged the Appellant's case and I did not find him to be a credible witness in relation to the contact between them. I found his evidence on this issue to be evasive and vague.

22. Given that I am satisfied that the relationship is not genuine and subsisting, I am not satisfied that Article 8 is engaged in relation to family life and the decision does not disturb the established private lives of the Appellant or of the Sponsor. The appeal on Article 8 human rights grounds is dismissed."

2. The appellant's grounds of appeal maintain that the judge gave insufficient reasons for dismissing the sponsor's explanation and evidence regarding his and his family's knowledge of the appellant prior to marriage and had failed to appreciate that the appellant met the indicators of a genuine and subsisting marriage as set out in the IDIs, Family Members under Appendix FM of the Immigration Rules, Annex FM Section FM 20 in relation to an arranged marriage. In amplifying the grounds of appeal, Mr Tinsley said that in respect of each of the sub-heads of paragraph 19 the judge failed to take sufficient account of the state of the evidence. He took particular issue with what the judge stated at 19(b) and paragraph 20, the latter which stated categorically that there was "no documentary evidence of [the sponsor having phone conversations with the appellant] in the last 5-7 months". He pointed out that this wholly overlooked the documentation contained between pages 70-90 of the appellant's bundle covering the period 5 June 2018 to 7 September 2018 (the hearing was on 7 January 2019).
3. Mr Clarke sought to argue that this documentation (these were said to be phone calls via IMO which is an application similar to WhatsApp) did not show the claimed contact of 30 minutes per day and showed very few calls in June and none in July. He did not consider that a "smattering of evidence covering half the period" could have been determinative.
4. With respect to Mr Clarke, the issue concerning this evidence is not whether it was determinative but whether it could have had a material impact on the outcome of the appeal when considered by a judge acting reasonably. The judge's unequivocal statement that there was "no documentary evidence" represented a clear failure to take into account relevant evidence. Further, even though the judge stated that she had fully considered the impact of the fact that the marriage was an arranged marriage in a different cultural context (the couple were both Pashtun), it is far from clear that she did not in fact apply criteria more fitted to a western marriage (see especially paragraph 19(d)).
5. Whilst I consider that the appellant may have difficulty in establishing her case, I am persuaded that the judge's assessment of it was vitiated by legal error necessitating that I set it aside and remit it to the FtT.

6. In order to assist the next judge dealing with this appeal, the appellant's representatives are directed to make available certified copies of the sponsor's passport. I envisage that although the sponsor will need to give oral evidence both parties will seek to focus on matters arising from the written and oral evidence he has given already.

7. To conclude:


The decision of the FtT Judge is set aside for material error of law.

The case is remitted to the FtT (not before Judge Ford).

8. No anonymity direction is made.

Signed:

Date:18 April 2019

A handwritten signature in black ink that reads "H H Storey". The signature is written in a cursive style with a long, sweeping tail on the final letter.

Dr H H Storey
Judge of the Upper Tribunal