



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

Appeal Number: HU/11655/2018

THE IMMIGRATION ACTS

**Heard at UT (IAC) Field House
On 15th August 2019**

**Decision & Reasons Promulgated
On 2nd September 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE J G MACDONALD

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**MRS MAHBUBA AKTER JAKIA
(ANONYMITY ORDER NOT MADE)**

Respondent

Representation:

For the Appellant: Mr L Tarlow, Senior Home Office Presenting Officer
For the Respondent: Mr A Rahman, legal representative

DECISION AND REASONS

1. For convenience I shall employ the appellations “Appellant” and “Respondent” as at first instance.
2. The Appellant is a citizen of Bangladesh who applied for settlement as the spouse of a British national to enter the United Kingdom and that application was refused by the Entry Clearance Officer (ECO). Her subsequent appeal to First-tier Tribunal Griffith was allowed on human rights grounds in a decision promulgated on 23rd April 2019. Permission to appeal was sought on the basis that the judge had failed to provide adequate reasons why it was accepted that the UK Sponsor had adequate

capacity to lawfully enter into a marriage even if the issue of capacity was not raised in the refusal letter.

3. Permission to appeal was initially refused but granted by Upper Tribunal Judge Coker in a decision dated 9th July 2019.
4. Thus, the appeal came before me on the above date.
5. For the Secretary of State Mr Tarlow relied on his grounds. The issue of capacity should have been considered by the judge and not to do so was a material error in law.
6. For the Appellant Mr Rahman relied on his Rule 24 notice and his skeleton argument. There was no error. The judge had considered matters appropriately and the decision should stand.
7. I reserved my decision.

Conclusions

8. The judge noted (paragraph 27) that the sole reason for refusal was because the ECO was not satisfied the marriage was genuine and subsisting owing to the paucity of evidence. It appeared that neither the ECO nor the Entry Clearance Manager had any knowledge of the state of health of the Sponsor and the practical limitations in terms of communicating with the Appellant that emerged during the hearing. The judge noted (paragraph 28) that the Sponsor gave evidence to the best of his ability.
9. The judge was satisfied that the Sponsor and the Appellant were in regular telephone contact. There was also evidence in his passport that he spent a month in Bangladesh as claimed between November and December 2018. The judge noted (paragraph 33) that there was evidence that the Appellant and Sponsor had conducted their married life mainly by telephone since the Sponsor's return to the UK and with a visit. There was no evidence of any countervailing factors such as a poor immigration history or deception.
10. In paragraph 34 the judge said that taking into account all the available evidence she was satisfied that sufficient evidence had been adduced to show on a balance of probabilities that the relationship was genuine and subsisting and that the parties intended to live together permanently in the UK. The judge therefore went on to allow the appeal on human rights grounds.
11. In the Rule 24 notice it is said that Judge Griffith soundly and properly handled and considered the matter such as capacity of the Sponsor's ability within the scope of his learning disability and limitation due to his autism. The judge had had the chance to assess the credibility and integrity of the Sponsor who had previously been married for eight years and was able to identify the Appellant and had been able to attend the

hearing before the Tribunal. It was argued that there was no material error in law to be found in respect of the decision of Judge Griffith.

12. The judge had the benefit of hearing the evidence from two witnesses – the Sponsor and her mother. It can be said she considered the evidence carefully. She applied the relevant case law. She made adequate findings and the clear implication of her findings is that the Sponsor did have adequate capacity to enter into a marriage.
13. In my view the decision is entirely appropriate based on what evidence was presented to the judge. There was no need to consider an adjournment. It was correct to say that the whole case turned on whether the marriage was genuine and subsisting. She had regard to the state of health of the Sponsor and the practical limitations that this imposed on him. The judge weighed the evidence appropriately and gave clear reasons why she considered that the parties did intend to live together permanently and that the relationship was genuine and subsisting.
14. It follows that there is no error in law in the judge’s decision which must stand.

Notice of Decision

15. The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.
16. I do not set aside the decision.
17. No anonymity order is made.

Signed *JG Macdonald*

Date 28th August 2019

Deputy Upper Tribunal Judge J G Macdonald