



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/15968/2019 (V)

THE IMMIGRATION ACTS

Heard remotely at Field House
On 2nd November 2021

Decision & Reasons Promulgated
On 22nd November 2021

Before

UPPER TRIBUNAL JUDGE FRANCES

Between

PALIDA FRASER-WRIGHT
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

ENTRY CLEARANCE OFFICER

Respondent

Representation:

For the Appellant: Mr H Sawar, instructed by S P Law

For the Respondent: Ms N Willocks-Briscoe, Home Office Presenting Officer

This has been a remote hearing which has been consented to by the parties. The form of remote hearing was video by Microsoft Teams (V). A face to face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. The documents that I was referred to are in the bundles on the court file, the contents of which I have recorded. The order made is described at the end of these reasons.

DECISION AND REASONS

1. The Appellant is a national of Thailand born on 16 March 1967. She appeals against the decision of First-tier Tribunal Judge S Gill, dated 7 January 2021, dismissing her appeal against the refusal of entry clearance as a spouse on human rights grounds.
2. The Appellant applied for permission to appeal on four grounds. Permission to appeal was granted by Upper Tribunal Judge Gill, on 23 June 2021, on grounds 2 and 4 for the following reasons:
 - “1. (Ground 2) It is arguable that the judge may have misapprehended the WhatsApp text messages between the appellant and the sponsor when she said, at para 39, that the date supplied by WhatsApp was not contained in the background of the messages. Arguably, she overlooked the dates in the background on several pages of bundle E, as contended in ground 2 of the grounds submitted to the First-tier Tribunal.
 2. (Ground 4) It is arguable that the judge failed to engage properly with, and/or make findings on, the credibility of the evidence of the appellant’s sister. At para 29 of her decision, she appears to be assessing the sponsor’s evidence (as opposed to the evidence of the appellant’s sister). At para 32, she mentioned the evidence of the appellant’s sister but arguably did not explain what she made of the evidence. At para 53, there is a brief mention of the appellant’s sister which, taken together with the rest of the judge’s decision, is arguably insufficient. Arguably, the appellant’s sister gave evidence that was capable of corroborating the evidence of the sponsor and the appellant.”
3. Mr Sawar relied on his skeleton argument dated 8 October 2021. He addressed ground 4 first and referred me to the statement of Supatra Rees [SR], the appellant’s sister and [30] of his skeleton argument. He submitted SR gave direct evidence of her observations of the relationship, when the appellant and sponsor met and when they started to form a bond. SR also explained how she had come to terms with the situation. Mr Sawar submitted this was evidence of some force going to the sole legal issue in dispute and upon which SR was cross-examined. He submitted it was clear from [53] of the judge’s decision that the judge had failed to engage with SR’s evidence. The judge failed to give reasons for rejecting SR’s evidence.
4. In relation to ground 2, Mr Sawar submitted there was a clear mistake at [39] of the decision. There was evidence of the dates of the WhatsApp messages. Having acknowledged the gap in messaging the judge could not rely on this mistake to discount significant evidence.
5. Ms Willocks-Briscoe submitted the judge summarised SR’s evidence at [31] and clearly took it into account in concluding at [32] that she was not satisfied the relationship was genuine. The judge considered all the evidence and gave adequate reasons at [33] onwards for coming to that conclusion.

6. Ms Willocks-Briscoe accepted the judge could have dealt with SR's evidence in more detail, but SR's evidence was quite limited and it had to be considered alongside the Sponsor's evidence. It was clear the judge was weighing up what was said in oral evidence as well as the documentary evidence. The contradictions were not adequately addressed and the judge's findings were open to her. This was not a case where the judge had to prefer the evidence of one witness over another. The judge had given adequate reasons for why SR's evidence of the relationship was not accepted at [54].
7. In relation to ground 2, Ms Willocks-Briscoe accepted that some of the WhatsApp messages had dates, but others did not. This was not the sole reason for undermining the reliability of the messages. The judge had serious concerns about who sent the messages at [39] to [41]. The judge considered the entirety of the evidence and her conclusions and reasons were sufficient to demonstrate why she dismissed the appeal. There was no material error of law in the decision.
8. In response, Mr Sawar submitted the failure to give reasons was a free-standing error of law. A summary of the evidence did not amount to findings. The judge had fundamentally misunderstood the case before her. The Respondent's case rested on inconsistencies between the Appellant and the Sponsor. SR's evidence did not address this. There was no finding whatsoever on the evidence of SR and [52] could not be said to be an assessment of SR's evidence. If SR was found credible, the appeal would be allowed. It was incumbent on the judge to form an assessment of the witness and the Respondent could not identify one part of the decision where this assessment was carried out.

Conclusion and reasons

Ground 4

9. At [16] and [17] the judge stated that SR gave evidence by BT Meet Me using the court appointed interpreter, relying on her statement as evidence in chief. Mr Sawar did not ask any supplementary questions. A full contemporaneous note was taken of the evidence (see [19]) and a summary of the cross-examination of SR is set out at [31].
10. At [32], the judge stated:

“I have the benefit if (sic) hearing the oral evidence of the sponsor and the witness. I am not satisfied that the relationship is genuine and subsisting. The sponsor was unclear and unable to recollect the details of his ‘deep, loving relationship’ with the appellant.”
11. There is nothing in SR's witness statement or in her oral evidence which undermines this finding. Her opinion that “John and Palida are very much in love. And I know

that they would not have caused the upset that their relationship initially did and hurt me if they did not have genuine and the deepest feelings for each other” is not capable of disturbing the judge’s conclusions at [54]:

“De facto I accept the parties are married. Mr Sawar submitted the interview discrepancies/inconsistencies were de minimus and pettifogging at best. I do not concur. The culmination of inconsistencies and lack of detail surrounding the commencement of the relationship with the appellant, the termination of relationship with his ex-wife, the date when Ms Rees moved out, the unexplained inconsistency regarding the divorce date and lack of communication between October and November 2020, departure from Thailand following the wedding, I am not satisfied that the appellant and sponsor are in a genuine subsisting marriage. In coming to this conclusion I have considered the photographs and contents of social media communications.”

12. There was no evidence in SR’s statement about the divorce or when SR moved out and her relationship with the Sponsor ended. In oral evidence the judge noted at [53] that SR paused for some time when she was asked when their relationship ended. In addition, SR’s evidence contradicted the Sponsor’s oral evidence of when the relationship with the Appellant began. In cross-examination, SR stated she first became aware of the relationship between the Sponsor (her husband at the time) and the Appellant (her sister) at the beginning of 2016 and she approached the Sponsor who kept denying it.
13. The Sponsor stated, in cross-examination, that he began to have feelings for the Appellant towards the end of her stay in 2017. SR broached the issue with the Sponsor two to three months after the Appellant’s visit to the UK was cancelled. The judge acknowledged these discrepancies at [48] and the lack of documentary evidence of the Appellant’s claimed trips to the UK in 2016 and 2017 at [49] and [50].
14. Taken at its highest, the evidence of SR did not adequately address the discrepancies in the Sponsor’s and Appellant’s accounts at [28] to [30], [35], [44] to [46] and [52]. Further, it was apparent, on reading the decision as a whole, that the judge took into account SR’s evidence and concluded that it did not corroborate the Sponsor’s account. Any failure to give adequate reasons was not material to the judge’s finding that the Sponsor was not a credible witness.

Ground 2

15. At [39], the judge stated:

“I note that the messages are dated within the body of the text. I do not find this to be the normal practice between people messaging each other. The sponsor accepted that some of the messages were sent via Wats app (sic). However, I note that the date supplied by the service provider is not contained in the background of the messages. The sponsor did not provide an explanation for

this. Therefore, on the balance of probabilities, I cannot be satisfied as to the time line they depict.”

16. At [40] the judge considered the content of the messages and the sponsor’s evidence on this issue. She concluded, “On the evidence supplied to me I cannot be satisfied who the messages were from and sent to. The Sponsor was unable to clarify this. I am not satisfied that these communications demonstrate a genuine subsisting relationship between the parties.”
17. The date in the background of the messages gives the day and the month but not the year. Not all of the messages were dated. The judge’s conclusion at [39] was open to her on the evidence before her. There was no mistake of fact. Even if there was, it was immaterial given the judge’s findings at [40].

Summary

18. It is apparent the judge assessed all the evidence in the round and the opinion of SR and the date of WhatsApp messages were not significant factors. The judge’s findings were open to her on the evidence before her and she gave adequate reasons for her conclusions. There was no material error of law in the decision dated 7 January 2021. I dismiss the Appellant’s appeal.

Notice of decision

Appeal dismissed

J Frances

Signed
Upper Tribunal Judge Frances

Date: 12 November 2021

TO THE RESPONDENT FEE AWARD

As I have dismissed the appeal I make no fee award.

J Frances

Signed
Upper Tribunal Judge Frances

Date: 12 November 2021

NOTIFICATION OF APPEAL RIGHTS

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within the **appropriate period** after this decision was **sent** to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent:
2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically)**.
3. Where the person making the application is in detention under the Immigration Acts, **the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically)**.
4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days (10 working days, if the notice of decision is sent electronically)**.
5. A "working day" means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.
6. The date when the decision is "sent" is that appearing on the covering letter or covering email