



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: OA/01249/2013

THE IMMIGRATION ACTS

Heard at Field House
On 6 October 2014

Determination Promulgated
On 15 October 2014

Before

UPPER TRIBUNAL JUDGE MOULDEN

Between

MR UMAR EJAZ
(No Anonymity Direction Made)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mrs H Price of Counsel instructed by Mayfair Solicitors
For the Respondent: Mr T Melvin a Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant is a citizen of Pakistan who was born on 23 January 1988. He was given permission to appeal the determination of First-Tier Tribunal Judge Fox ("the FTTJ") who dismissed his appeal against the respondent's decision of 15 November 2012 to refuse him entry clearance for settlement in the United Kingdom as the husband of Mrs Iram Pervez ("the sponsor") under the provisions of paragraph 281 of the Immigration Rules.
2. The appeal against the decision of the FTTJ came before me and I found that there were errors of law. I set aside the decision and directed that it should be remade in the Upper Tribunal. No findings of credibility or fact were

preserved. My Decision and Directions are set out in the Appendix to this determination.

3. The appellant's solicitors have provided a 191 page bundle which, I am told, contains all the material which was before the FTTJ and a number of new witness statements (items 1 and 3 to 8). I have a skeleton argument from Mr Melvin.
4. I heard oral evidence from the sponsor and her two sisters, Nighat Parveez and Hina Parveez. They were examined, adopted their witness statements and were cross examined. I asked some questions for the purpose of clarification. Their evidence is set out in my record of proceedings. There are witness statements from other relatives who, I am told, were unable to attend.
5. Mr Melvin relied on the refusal letter and his skeleton argument. He submitted that much of the evidence in the appellant's bundle was post decision but, in reply to my question, he accepted that this could be considered if it fell within DR (ECO: post-decision evidence) Morocco * [2005] UKIAT 00038 principles. He argued that the absence of any witness statement from the appellant or members of his family was startling. The case was one sided with all the evidence coming from the sponsor and her family. The appellant and the sponsor only started communicating on the telephone using Lyca Mobile in order to provide documentary evidence of contact between them. They had met only twice since the wedding and it was surprisingly that the sponsor would not have visited the appellant more often. If, as she said, it was expensive to travel to Pakistan they could have met in a third country which was cheaper to travel to.
6. Mr Melvin submitted that the whole process was designed to do no more than enable the appellant, who is the sponsor's cousin, to come to the UK to work rather than to live with and be married to her. Perhaps surprisingly in the light of this submission he said that he took no point on the credibility of the three witnesses except that their witness statements looked similar and, in the case of the sponsor's two sisters, showed no direct contact with the appellant. He argued that there was no clear evidence that the sponsor always telephoned the appellant on one telephone number. However, in reply to my question, Mr Melvin accepted that he had not put this to the sponsor. I was asked to dismiss the appeal.
7. Mrs Price accepted that the burden of proof fell on the appellant to the standard of the balance of probabilities. The sponsor had provided an explanation for the lack of statements from the appellant and his family. She said that she did not think these were needed. She had explained the length of time it had taken from their marriage until now during which she had spent time with the appellant on two occasions. Firstly before making the application she needed to find a job which took approximately a year. Then all the material had to be assembled to support his application. It was expensive to go and visit him in Pakistan and it had never crossed anyone's mind that they could meet in a third country. She submitted that the persistence of the

appellant and the sponsor throughout the application and appeals process was strong evidence of their devotion and that they wanted to live together.

8. As to any suggestion that the appellant was coming here for economic reasons the evidence was that he had a job and was working in Pakistan, in a shoe shop owned by his father. 16 members of the sponsor's family attended the wedding in Pakistan where there were more than 500 guests.
9. Mrs Price relied on Goudey (subsisting marriage - evidence) Sudan [2012] UKUT 00041 (IAC) in particular at paragraphs 5, 10 and 14. I was asked to find that the three witnesses were credible and to apply common sense; it would be incredible if so many members of the family travelled to Pakistan to attend a false marriage. I was asked to find that the marriage was genuine and subsisting and to allow the appeal.
10. I reserved my determination.
11. The respondent refused the application for one reason only; "therefore I am not satisfied that your relationship is subsisting or that you intend living permanently with your sponsor in the UK. Paragraph 281 (iii)." The respondent did not suggest that the other requirements of paragraph 281 had not been met.
12. Mr Melvin did not directly challenge the evidence of the sponsor or her two sisters or suggest that they were not credible. However, it is difficult to see how this can be reconciled with his submission that the marriage is not genuine and was entered into purely for the purpose of getting the appellant to the UK where he could work without being in a subsisting marriage with the sponsor.
13. Mr Melvin's main submissions as to why the relationship was not subsisting and the appellant and the sponsor did not intend to live permanently with each other were the lack of witness statements from the appellant and any member of his family, the absence of visits by the sponsor to the appellant since the marriage, the lack of documentary evidence of contact between them and the fact that it was an arranged marriage between cousins.
14. The sponsor's explanation for the lack of witness statements from the appellant or any member of his family was simply that she did not think that these were necessary. I find the absence of any statement from the appellant to be surprising. I must assess this factor with the rest of the evidence. There was more than one strand to the sponsor's explanations for the lack of meetings between her and the appellant since the wedding which took place on 5 February 2011. She said that she was in Pakistan for three months before the wedding and that they lived together for two months after the wedding. She returned to the UK on 6 April 2011. She had resigned her job in the UK to go to Pakistan because she knew that she would be away for some time and was only able to take a maximum of two weeks holiday. When she returned to the UK she started searching for a job. It took her approximately a year to find one

after which it took her some time to put together the documentary evidence which would be needed to support the application. Since the refusal of the application she has had to devote a large part of her time to her job and the appeals process. She seemed genuinely surprised at the suggestion that she and the appellant could meet in a third country. I find that this was never considered and there is no reason why it should have been. The sponsor considered that it would be expensive to travel to Pakistan for just a short visit which the holiday entitlement in her job would permit. However, she did manage to get time off and lived with the appellant in Pakistan for approximately 2 months from 14 June 2014. The entry to Pakistan stamp in her passport is dated 14 June 2014 and the exit stamp 4 August 2014.

15. Mr Melvin did not cross examine the sponsor about the documentary evidence relating to mainly telephone communications between her and the appellant. I find her explanation persuasive, that she changed to using Lyca Mobile after she discovered that documentary evidence of communication between them would assist and that this organisation provided it which her previous provider did not. I find that the fact that the marriage was arranged between cousins is not an indication that it was not a genuine marriage. Indeed, as arranged marriages between cousins frequently take place it is more likely to be an indication that it was a genuine marriage. I now have more wedding photographs than were previously available and the sponsor has identified many members both of her family and the appellant's family. Mr Melvin submitted that there was no evidence of contact between the sponsor's sisters and the appellant. That is not correct. Their evidence was that they had met him both at the wedding and on previous family visits. Hina Parveez also said that she sometimes spoke to the appellant during telephone calls between him and the sponsor.
16. As against these factors which Mr Melvin argues militate against the existence of a genuine marriage I take into account the witness statement of other members of the sponsor's family although I give these less weight than I might have done had they attended to give evidence and be cross examined. I found the evidence of the sponsor and her two sisters to be entirely consistent and unshaken in cross examination.
17. One of the sponsor's sisters is married and lives elsewhere but the other lives in the same house as the sponsor and her evidence was that she observes the usually daily frequency with which the sponsor communicates with the appellant. From time to time she also speaks to the appellant during phone calls between him and her sister. She confirmed that the appellant and the sponsor communicate by Skype (less frequently because difficulties can be encountered in establishing contact), telephone and WhatsApp. Communications by WhatsApp can be printed out and some have been produced. This corroborates the evidence of the sponsor as does the evidence of the other sister although, because she lives elsewhere, she only observes the sponsor communicating with the appellant when she visits the family home where the sponsor lives. I accept the sponsor's explanation that she only started using Lyca Mobile cards for communicating with the appellant after

she discovered that these would enable her to obtain documentary confirmation of the calls. Whilst I note that these records show calls to more than one telephone number and the documentation does not of itself prove that the sponsor has been speaking to the appellant I find, in line with Goudey, that it does give some corroborative support for her evidence that she is in regular contact with the appellant in this way. I find that the WhatsApp printouts, although in a mixture of English and another language, are couched in terms which support the sponsor's evidence that they record communications between her and the appellant. There are Eid and other special occasion cards passing between the appellant and the sponsor. I do not consider that their numbers are indicative of any lack of affection or commitment where it is clear that the main communications are by telephone and WhatsApp.

18. The three sisters gave consistent evidence that approximately 16 members of the family went to Pakistan for the sponsor's wedding to the appellant and that there were more than 500 guests at the wedding. All three sisters confirmed that they had met the appellant on previous family visits to Pakistan and that he was their cousin.
19. The sponsor said that when she went to Pakistan with her mother before the wedding it was to consider marriage to possible choices other than just the appellant. Although the marriage was arranged the appellant was her choice. She was emphatic that their marriage was genuine and that both of them wanted to live together. She was instrumental in pursuing the application and appeal process and had persisted with this over a lengthy period despite refusals and setbacks.
20. Weighing all the evidence in the round I find that the sponsor and her sisters are credible witnesses. To the standard of the balance of probabilities I find that the appellant has established that his relationship with the sponsor is subsisting and that they intend living permanently with each other in the UK. The requirements of Paragraph 281 (iii) are satisfied and it is not disputed that the other requirements of paragraph 281 are met.
21. The FTTJ did not make an anonymity direction. I have not been asked to do so and can see no reason to make one.
22. Having set aside the determination of the FTTJ I remake it and allow the appellant's appeal under the Immigration Rules

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Signed
Upper Tribunal Judge Moulden

Date 8 October 2014

APPENDIX

1. The appellant is a citizen of Pakistan born on 23 January 1988. He has been given permission to appeal the determination of First-Tier Tribunal Judge Fox (“the FTTJ”) who dismissed his appeal against the respondent’s decision of 15 November 2012 to refuse him entry clearance for settlement in the United Kingdom as the husband of his wife and sponsor Mrs Iram Pervez under the provisions of paragraph 281 of the Immigration Rules.
2. The respondent rejected the application on the basis that the relationship was not subsisting and that the appellant did not intend to live permanently with the sponsor.
3. The appellant appealed and the FTTJ heard the appeal on 21 January 2014. Both parties were represented, the appellant by Mr Rehman who appears before me. The FTTJ heard evidence from the sponsor and Mr Hussain who is the sponsor’s uncle. The FTTJ concluded that there was no reliable evidence to demonstrate that the appellant was engaged in a genuine and subsisting relationship with the sponsor. The appellant had relied on inconclusive evidence of telephone contact. The sponsor had said that they had exchanged lots of greeting cards but only two had been submitted. There was a lack of evidence of meaningful contact between them and corroborative evidence of communications which should have been available had not been provided. The evidence of Mr Hussain was self-serving. There was no witness statement from the appellant. There was no reliable evidence of Article 8 family life. The appeal was dismissed under the Immigration Rules and on human rights grounds.
4. The appellant applied for and was granted permission to appeal to the Upper Tribunal. In granting permission to appeal the judge indicated that the FTTJ appeared to have ignored significant evidence of telephone calls and messages. The telephone cards were dismissed as of no probative value arguably without giving reasons. The repeated use of the word “meaningful” had not been explained. Permission to appeal was granted in respect of all grounds.
5. There is a Rule 24 response from the respondent. The sponsor attended the hearing before me, accompanied by an aunt and her sister. I have the 82 page bundle which was before the FTTJ and a further bundle of new material running to 99 pages which was only submitted on the day of the hearing
6. Mr Rehman relied on the grounds of appeal and submitted that the FTTJ’s repeated use of the word meaningful was unclear and unexplained. The bundle included cards sent by the appellant and the sponsor. Her evidence supported by the evidence contained in the documents was that one of the ways in which they communicated was initially using telephone cards and subsequently through Lyca Mobile. My attention was drawn to paragraphs 10

and 12 of Goudey (subsisting marriage – evidence) Sudan [2012] UKUT 00041 (IAC). There was ample evidence before the FTTJ of a great deal of communication between the appellant and the sponsor by various means. The Immigration Rules did not require documentary evidence of written communications, texts or cards.

7. In reply to my question, Mr Rehman told me that the appellant and the sponsor are first cousins. He is her mother's brother's son. I indicated to both representatives that I would welcome submissions on what seemed to me the obvious point: I could detect no findings as to the credibility of the sponsor or, except possibly in paragraphs 34, Mr Hussain.
8. Mr Rehman asked me to find that the FTTJ had erred in law, to set aside the decision and to remake it.
9. Mr Tufan submitted that the FTTJ's reference to "consistent" in paragraph 27 related only to the sponsor's evidence relating to the greetings cards. All the Lyca Mobile entries were post decision. He submitted that the conclusions were open to the FTTJ on all the evidence. In reply to my question, he accepted that there was a lack of any clear finding as to the credibility of the sponsor and possibly also Mr Hussain.
10. There was no reply and I reserved my determination.
11. The summary in Goudey prepared by the author of the determination states;
 - i) *GA ("Subsisting" marriage) Ghana * [2006] UKAIT 00046 means that the matrimonial relationship must continue at the relevant time rather than just the formality of a marriage, but it does not require the production of particular evidence of mutual devotion before entry clearance can be granted.*
 - ii) *Evidence of telephone cards is capable of being corroborative of the contention of the parties that they communicate by telephone, even if such data cannot confirm the particular number the sponsor was calling in the country in question. It is not a requirement that the parties also write or text each other.*
 - iii) *Where there are no countervailing factors generating suspicion as to the intentions of the parties, such evidence may be sufficient to discharge the burden of proof on the claimant.*
12. I find that the FTTJ erred in law. Whilst not raised in the grounds of appeal it is obvious from the determination that there are no findings of credibility in relation to the evidence of the sponsor or clear findings in relation to the evidence of her uncle Mr Hussain. Both of them gave oral evidence and both of them provided witness statements. If, by "self-serving" the FTTJ meant that Mr Hussain's evidence assisted the appellant and the sponsor then I cannot see that this is, on its own, a valid criticism. The conclusion that his evidence was of "no probative value" is not explained. I would have thought that, if believed, his evidence which is said to corroborate the claims of marital relationship was "meaningful evidence". I note that in his witness statement

he said that the appellant and the sponsor were in regular contact with each other.

13. The evidence of the sponsor given orally and in her witness statement was of vital importance to the question of whether the relationship was subsisting and whether she and the appellant intended to live permanently with each other. The lack of any finding as to her credibility or findings of fact in relation to her evidence are serious errors of law.
14. The determination gives the impression that every effort is being made to reject the documentary evidence as to contact between the appellant and the sponsor without addressing any of the evidence in the witness statements or given orally. It is apparent from Goudey that evidence such as telephone cards are capable of corroborating evidence as to telephone communication even if, as is often the case with telephone cards, they do not show the telephone number called. In this case the Lyca Mobile documentation does show many telephone calls to the same number with a Pakistan prefix. In the circumstances, where there was no evidence that it was possible to produce details of call times, dates and durations for Skype communications it was not open to the FTTJ to rely on what she concluded was a lack of independent corroborative evidence. The phone cards and Lyca Mobile evidence should have been considered not in isolation but in conjunction with the sponsor's evidence. It is not clear what the FTTJ meant by the references to "meaningful contact", "meaningful messages", "meaningful detail", "meaningful evidence" or "meaningful ties".
15. Having found that the FTTJ erred in law I set aside the decision. Remaking the decision will involve hearing oral evidence and, if admitted in evidence, considering the further evidence submitted on the day of the hearing in a 99 page bundle. This should have been submitted earlier. There was no time to rehear the appeal which will have to be adjourned until another day. I direct that this should be done in the Upper Tribunal.

DIRECTIONS

- 1) To be listed for first available date after 1 August 2014.
- 2) Time estimate - two hours
- 3) The hearing is to be with all issues at large.
- 4) No findings of fact made by the FTTJ are preserved.
- 5) No interpreter required.

Date: 5 June 2014

Upper Tribunal Judge Moulden