



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: OA/01739/2013

**THE IMMIGRATION ACTS**

Heard at Field House  
On 7 July 2014

Determination Promulgated  
On 5 August 2014

Before

UPPER TRIBUNAL JUDGE ESHUN

Between

MRS QURAT ULAIN

Appellant

and

ENTRY CLEARANCE OFFICER - ISLAMABAD

Respondent

**Representation:**

For the Appellant: Mr J Wells, Solicitor

For the Respondent: Mr S Kandola

**DETERMINATION AND REASONS**

1. The appellant appeals with leave against the determination of First-tier Tribunal Judge Malone in which he dismissed the appellant's appeal against the decision of the respondent to refuse her entry clearance to settle in the UK as the spouse of Mohammad Aziz Qureshi, a British citizen, present and settled in the UK. The appellant's application was refused on 29 November 2012.

2. The judge heard oral evidence from the appellant's sponsor Mr Qureshi. He also considered the appellant's bundle numbering 180 pages.
3. The appellant's application was refused by the respondent under paragraph 281 because the respondent was not satisfied that she had demonstrated that her marriage to Mr Qureshi was genuine and subsisting, that they intended to live together permanently as man and wife and that they could maintain and accommodate themselves adequately in the UK in accordance with the Immigration Rules.
4. The judge accepted that the appellant had met the maintenance and accommodation requirements of the immigration rules.
5. The judge stated at paragraph 18 that having carefully analysed the scant evidence, he came to the conclusion that the appellant had failed to discharge the burden of demonstrating that, as at the date of decision, her marriage to Mr Qureshi was genuine and subsisting and that they intended to live together permanently as man and wife.
6. The judge considered what the appellant said in the Notice of Application. She said that she and Mr Qureshi had known each other since childhood. They were family friends before their marriage. Mr Qureshi flew to Pakistan on 10 October 2011. He and the appellant were married on 26 October 2011 in Rawalpindi, the appellant's home city. They lived together until 29 October 2011, when Mr Qureshi returned to the UK. Mr Qureshi then travelled to Pakistan on 16 October 2012, returning on 31 October 2012.
7. The judge said he was provided with Mr Qureshi's telephone records covering the period January 2012 to June 2012. He was satisfied that those records showed that Mr Qureshi had made numerous phone calls to the appellant of significant length. The significant calls lasted from about fourteen minutes to over half an hour.
8. The only account of physical contact between the appellant and Mr Qureshi he had was that of Mr Qureshi. He claimed, as recorded in the appellant's Notice of Application, that they had lived together for a period of three days in October 2011, the three days immediately after they got married. Mr Qureshi said he spent virtually the entirety of the period he was in Pakistan in October 2012 with the appellant. The judge said he had no wedding photographs or photographs of the appellant and Mr Qureshi together at any time and he had no evidence whatsoever from the appellant herself.
9. In arriving at his conclusion, the judge also took into account the copy money transfer receipts showing money being sent to the appellant. There were six. They were respectively dated 2 January 2013, 20 March 2013, 25 June 2013, 6 July 2013, 5 November 2013 and 11 February 2014. Three showed Mr Qureshi as the payer. The

three other receipts were from different payers. Four of the receipts were for payments of £100; and one was for £505 and the other for £1,000. Mr Qureshi told the judge "*we had sent £500 for gold*". The judge did not know who the other payers were and more importantly none of the receipts related to payments made before the date of decision.

10. The judge directed himself as to the standard of proof being on the balance of probabilities and having carefully considered and analysed the scant evidence he came to the conclusion that the appellant had failed to discharge the burden of demonstrating that, as at the date of decision, her marriage to Mr Qureshi was genuine and subsisting and that they intended to live together permanently as man and wife.
11. Mr Wells essentially argued that the judge should have allowed the appeal having accepted that Mr Qureshi had made numerous calls to the appellant of significant length, the payments made by the sponsor to the appellant and the sponsor's evidence which, Mr. Wells submitted was reliable. The fact that there were no photographs of the appellant and Mr Qureshi together and no witness statement from the appellant did not justify the judge's conclusions. This was an arranged marriage and therefore there was little physical relationship between the appellant and Mr Qureshi.
12. Mr Wells raised another argument which was not made before the judge. It was this: that the sponsor had to spend as little time as he could in Pakistan in order to return to London in order to work to meet the financial requirement. This was not an argument that I could not consider it. In any event it would not have made any difference to the judge's decision.
13. I was not persuaded by Mr Wells' arguments that the judge made an error of law in his approach to the evidence. I accept Mr Kandola's submission that there was a fundamental problem for the appellant and the sponsor which was that there was no evidence from the appellant herself. The ECO was questioning the genuineness of the marriage and yet there was no evidence from the appellant apart from her entry clearance application. The evidence the judge received was one-sided. It was from the sponsor alone. The judge did accept that there were a significant number of telephone calls to the appellant but in the absence of evidence from the appellant, we do not know what her intentions are. Out of the six remittance receipts only three were from the sponsor to the appellant. Furthermore, as noted by the judge none of the receipts later related to payments made before the date of decision. Add that to the lack of photographs or evidence of physical contact between the appellant and Mr Qureshi which was limited to the three days they were together when they got married and the fourteen days in October 2012, there was insufficient evidence before the judge to enable him to conclude that the marriage was genuine and subsisting and that they intended to live together as husband and wife. On the limited evidence that was before the judge, I find that his findings were perfectly sustainable.

14. The judge did not make an error of law. The judge's decision dismissing the appellant's appeal shall stand.

Signed

Date 29/07/2014

Upper Tribunal Judge Eshun