



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: OA/02220/2013

THE IMMIGRATION ACTS

Heard at Field House
On 11th March 2014

Determination Promulgated
On 12th March 2014

Before

UPPER TRIBUNAL JUDGE MARTIN

Between

MR MOHAMMED RUBEL

Appellant

and

ENTRY CLEARANCE OFFICER - DHAKA

Respondent

Representation:

For the Appellant: Mr A M Shahjahan (instructed by Kalam Solicitors)
For the Respondent: Mr P Nath (Senior Home Office Presenting Officer)

DETERMINATION AND REASONS

1. The Respondent appeals to the Upper Tribunal, with permission, against a decision of the First-tier Tribunal (Judge Fletcher-Hill) promulgated on 17th January 2014 by

which it allowed the Appellant's appeal against the Entry Clearance Officer's decision to refuse him entry clearance as a spouse.

2. Although the Entry Clearance Officer is the Appellant before the Upper Tribunal, I will continue to refer to the Entry Clearance Officer as the Respondent and Mr Rubel as the Appellant for the sake of clarity and continuity.
3. As the application was made on 8th July 2012 the application fell to be considered under paragraph 281 of the Immigration Rules, namely before the increased maintenance requirements..
4. By the time the matter came before the First-tier Tribunal the only matters in issue were whether the marriage was genuine and subsisting and whether the parties could be maintained adequately without recourse to public funds.
5. In the grounds the Respondent contends that the Tribunal failed to provide adequate reasons for its findings at paragraphs 37 and 38 that the Appellant met the requirements of the Immigration Rules. It is submitted that the Appellant and the Sponsor failed to provide sufficient documentary evidence that they had been in contact with each other, that evidence produced post-dated the decision and should not be taken into account and therefore their marriage was not genuine and subsisting. It is also submitted that the Tribunal failed to provide adequate reasons why the Appellant can be adequately maintained, given the issues with regard to the amount the Sponsor earns.
6. It is true that the part of the determination below the heading "Consideration of the Evidence, Findings of Fact and Decision" are contained in two paragraphs only, paragraphs 37 and 38. At first reading it might appear that those findings are inadequate. However, when the determination is read as a whole it is clear that from paragraph 6 the Judge set out the history of the application and the grounds of appeal. She set out the issues before the Tribunal. From paragraph 9 the Judge set out the oral evidence and the documents that were before her. She records the evidence as to why the Sponsor had not visited her husband since returning in August 2011 after the marriage, namely that they did not anticipate the process would be so lengthy but she was now planning a holiday and had sought leave from her employers. The Judge recorded what appeared at first to be contradictory answers about the Appellant's work in Bangladesh and then recorded the Sponsor's explanation.
7. The Judge recorded that the Sponsor gave evidence that they had kept in contact for five years by telephone and Skype using a web cam. She did not have documentary evidence of this, although to be fair it would be difficult to provide such evidence. She explained that the Sponsor used phone cards because that was the most economic way to call Bangladesh. She explained how she had met her husband. The Judge noted that the telephone records that had been produced post-dated the decision. It is recorded that there was no photographic evidence or documentary evidence of the relationship.

8. The Judge referred to the evidence she heard from the Sponsor and evidence from the Sponsor's brother offering third-party support and evidence in relation to the Sponsor's income which is in excess of the income support level. The Judge set out in detail therefore from paragraph 9 to paragraph 34 the oral evidence and explanations for the shortcomings in the documentary evidence. She had the benefit of hearing from the Sponsor and at paragraph 37 said that on the basis of the evidence that she had heard from the Sponsor and the documents considered by the Respondent and those submitted in connection with the appeal she found the Sponsor to be a credible and responsible and hard-working young woman who she had no doubt wished to be reunited with her husband. She accepted the evidence that they married and lived together in the period after her marriage until the Sponsor returned to the UK and he accepted her evidence that she kept in touch with her husband by telephone and Skype. On that basis the Judge accepted that the marriage was genuine and subsisting. On the basis of the evidence before her and having heard oral evidence the Judge was entitled to make that finding. True it is that the finding is short but it is sufficient.
9. The Judge goes on in the next paragraph to say that on the basis of the Appellant's earnings and third party support she was also satisfied that the maintenance requirement was met. Again the Judge was entitled to accept the evidence before her
10. I therefore find that the determination of the First-tier Tribunal does not contain an error of law and accordingly the appeal to the Upper Tribunal is dismissed.

Signed

Date 11th March 2014

Upper Tribunal Judge Martin