Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: OA/04076/2013

THE IMMIGRATION ACTS

Heard at Birmingham	**Determination Promulgated**
On 29th July 2014	**On 7th August 2014**

Before

DEPUTY UPPER TRIBUNAL JUDGE FRENCH

Between

GHULAM JILANI

Appellant

and

ENTRY CLEARANCE OFFICER – ISLAMABAD

Respondent

Representation:

For the Appellant: Mr M Sarwar instructed by Lexton Law Solicitors
For the Respondent: Mr D Mills, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The Appellant, who is a citizen of Pakistan, appeals with permission against the decision of Judge of the First-tier Tribunal Graham to dismiss his appeal against refusal of entry clearance as the husband of the Sponsor, Saqba Shafiq, who is a British citizen. The judge found in her determination that the Appellant had not established that he was in a subsisting marriage in which both parties intended to live together permanently as spouses nor that it had been shown that the Appellant

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could be adequately maintained. The date of the original decision under appeal made by the Entry Clearance Officer was 14th December 2012 but the application was made prior to the changes to the Immigration Rules introduced on 9th July 2012.

2. At the hearing Mr Sarwar relied on the grounds of application. He said that the judge had erred in her approach to assessment of the subsistence of the relationship. She had noted that the Sponsor had travelled to Pakistan on 30th January 2012, the couple had married on 4th February and the Sponsor had returned on 7th February, only three days after the ceremony. However he submitted that the judge had failed to take account of the Sponsor's evidence that her early return had been due to illness and the invoice for the air ticket showed that the intended date of return had been 11th February. There was also evidence before the judge that the Sponsor had visited again between 5th and 18th October 2013, almost two weeks, but the judge had failed to attach weight to that visit. The couple were clearly married and the Sponsor had visited again a year later. They had been in touch by telephone and he referred to communication by telephone by prepaid cards as well as by Lycamobile and iCard Mobile. Although some calls were short, some were more substantial and he pointed to calls which had lasted several minutes and in some cases more. The fact that some calls might be short did not necessarily mean that was the intended duration and they might have been discontinued through no fault of the parties. The telephone calls were not insignificant and many were over five minutes. He said it was clearly apparent that the Appellant and Sponsor kept in contact whilst apart. The judge had not given proper weight to these calls and had concentrated only on the short calls.

3. He continued that also in the Respondent's bundle were copies of an Eid card and a New Year card. The originals were with the ECO and yet the judge had ignored the impact of these. There was evidence of the Sponsor staying after the marriage. He said this was evidence of cohabitation and of further cohabitation when she returned in 2013 (evidenced by entries in her passport) and there were two photographs of the Appellant and Sponsor together. The judge appeared to have expected many photographs to have been produced but there were cultural issues. The Sponsor was from a conservative family, her father being an imam, and they could not have stood so close together had they not been married. It was apparent from the application form that the Appellant was proposing to live at the Sponsor's address. He said the totality of the evidence showed that there was a genuine relationship. He relied upon the reported determinations of **GA ("subsisting" marriage) Ghana* [2006] UKAIT 00046** and **Goudey (subsisting marriage – evidence) Sudan [2012] UKUT 00041 (IAC)**.

4. With regard to employment, the judge had not accepted that the Sponsor was employed as claimed because she did not find that the Sponsor could have obtained her degree without attending tutorials but he said all of the course material was available on line. She had attended university and obtained a first class degree but to attend full-time did not mean 9am till 5pm five days per week; it could be anything between eleven and twenty hours a week. It did not imply that the Sponsor could not do part-time work. He said that the judge failed to take account of the fact that the work was 27 hours per week. If she was also studying at university for fifteen

hours that would still only be 42 hours per week in total, including her work, and it was plausible and possible that she would do so. He continued that the judge had not taken account of the best material evidence which was the letter from HM Revenue & Customs. The Sponsor had produced copy wage slips and her bank account which showed payments corresponding to the wage slips and there had also been produced a P60 for the year 2012/2013 and a letter from the employer's accountant. Taking the totality of that evidence he submitted that the judge's findings were irrational and perverse.

5. Finally he said that the judge had not considered Article 8 rights although he accepted that if the judge had made a finding that there was no live relationship then Article 8 would not be relevant.

6. In response Mr Mills said that the judge had not ignored the evidence. She was conscious of the two periods of cohabitation but they were very brief. The Sponsor had returned to this country three days after the wedding and had waited twenty months before going to Pakistan again, when she had only stayed another thirteen days. They had spent less than three weeks together, that was three weeks in a two year marriage and there had been no real explanation why they had not spent more time together.

7. With regard to the telephone records he said that the judge was quite right; the majority of those calls were very short. There were some longer ones but there were only a dozen or so. She had been correct in her assessment. The Appellant's representative today had referred to various calls but there had been no bundle before the First-tier Judge with a schedule of relevant calls. The judge had been entitled to take the view she did of the evidence. The judge had noted that there was no evidence for instance by way of email or text and there had only been two cards. The judge had taken account of the evidence and found that that it did not demonstrate a subsisting relationship. The case of **Goudey** only established that phone cards were capable of affording weight but the judge found countervailing factors, notably that the Sponsor had left three days after the wedding and had only stayed for less than two weeks on the next occasion. He said that the challenge now mounted was simply a disagreement with the findings. The judge's findings were not irrational and were reasoned.

8. With regard to maintenance, that would only be material if the relationship finding was set aside. The judge did not find the evidence submitted reliable. The burden was upon the Appellant. She gave reasons for doubting that evidence. The Sponsor was studying for a first class university degree and yet it was said she had not attended lectures or tutorials. There was no supporting evidence from the university. It was very hard to believe that she could have been such a successful student if she was not attending university and that if she were doing that that she could have held down what was in effect a full-time job. The letter from HMRC was reliant on documents from the employer and that letter gave no details of pay or tax. The P60 form submitted showed a total income of £7,294 which was below the tax

threshold. The employment was by an interested relative. He said that the findings were well reasoned and not irrational.

9. Finally Mr Sarwar said that the Appellant lived in a village in Pakistan and emails were probably not a practical possibility but the evidence showed cohabitation. With regard to employment, all employers self-declared and the Sponsor had only been working for 27 hours for each week. The judge had reached an unjustified conclusion. The wage slips were consistent with the money going into the Sponsor's account.

10. I have to decide not whether I would have decided this appeal in the same way as the judge but whether she has made a material error of law. The Sponsor gave oral evidence before the judge. At the relevant time she was studying law at the University of Wolverhampton and was awarded a first class degree in that subject following that study, in July 2013, shortly after the application was submitted. She claimed to have been working at the time for 27 hours per week with Tividale Foods, which was owned by a relative of her father, and although she always worked the same hours she worked them at flexible times.

11. The judge's findings in this regard are set out at paragraphs 20 to 23 of the determination. The judge did not find it credible that the Sponsor would be able to graduate from a degree course without attending lectures or tutorials in the final two years of the course. The Sponsor had agreed that it was the policy of Wolverhampton University to keep a record of student attendance and that such a record was kept but did not pursue students with poor attendance but only in the final year. The judge did not find it plausible or likely that given the university's policy to keep records of student attendance and the fact that a register of students attending lectures was kept that the university would then take no action in relation to persistent non-attendance. The records were likely to be important for health and safety amongst other reasons. The Sponsor had said that in the second and third year of the degree course she had only attended the first lecture of each topic and then had studied at home and had not attended tutorials for the last two years of her course yet she obtained a first class degree. The judge found it extremely unlikely that she would have been able to gain a first class honours degree without attending the lectures or tutorials and the Sponsor had not explained how she would have been able to know when to attend the lectures which she did go to. The judge came to the conclusion that she was satisfied that the Appellant must have been a regular attender at the university and that led her to doubt her account that she was able to work for Tividale Foods for the time claimed. She had considered the reliability of the documents submitted in support of the employment but looking at the matter in the round and bearing in mind these factors and that the employers were relatives of her father and therefore relations of the Appellant as well and might well wish to assist in entry clearance, she did not find the evidence reliable.

12. The judge was clearly aware of the documentation which had been submitted, in the nature of her payslips with corresponding entries in the bank account and the letters from HMRC and from the accountants. These were contained in the two bundles of

papers before her which she set out at paragraph 6 of the determination that she had considered. The judge gave sufficient reasons for her finding in that the Appellant is able to ascertain why she found against him in this respect and she also explained how she had reached those conclusions. Another judge might have reached a different conclusion but the reasons that she gave were adequate and were open to her. They were not perverse or irrational. No material error is disclosed.

13. With regard to the relationship, the judge was faced with a considerable list of telephone calls by various means and copies of telephone call cards. There does not appear to have been a schedule provided of what were said to be the relevant telephone calls. Nonetheless she was factually correct in stating, as she did at paragraph 13 of her determination, that the log showed a large number of calls being made from the Sponsor's telephone number to the Appellant's telephone number of short duration. She was aware that it was an arranged marriage and that the couple were first cousins. She noted that the Sponsor had left Pakistan three days after the wedding ceremony although the return flight had been booked for a little later. The Sponsor had said that she had become ill but there had been no medical evidence produced and the judge found it surprising that if the Sponsor was ill as claimed that she would have been able to undertake the long flight from Pakistan to the United Kingdom. There was little by way of correspondence. The judge referred to the Eid card and another card and she said that there were partial photocopies in the bundle. She did not decline to attach evidential weight to the documents because the originals were not produced but because she had no information as to when the documents had been sent. She commented on the lack of communication by means other than telephone and again that the majority of the calls were of extremely short duration. She noted the visit twenty months after the marriage but noted that the Sponsor had not explained why she did not accompany her father to Pakistan in July 2013 when he visited. Taking all the factors together she was not satisfied that it had been established that the marriage was subsisting.

14. As was pointed out at the hearing, **Goudey** merely establishes that telephone calls may constitute evidence of contact. Judge Graham gave other reasons for doubting the relationship and the existence of telephone records was far from being conclusive. Once again her findings allowed the Appellant to know why he had not succeeded in this respect and were reasoned. The judge had heard oral evidence. She stated that she had considered the evidence in the round. In **VW (Sri Lanka) v SSHD** Lord Justice McCombe (at paragraph 9 of that judgment) endorsed the comments of Lord Hoffmann in Biogen Inc. v Medeva Ltd that:

> "The need for appellate caution in reversing the trial judge's evaluation of the facts is based upon much more solid grounds than professional courtesy. It is because specific findings of fact, even by the most meticulous judge, are inherently an incomplete statement of the impression which was made upon him by the primary evidence. His expressed findings are always surrounded by a penumbra of imprecision as to emphasis, relative weight, minor qualification and nuance … of which time and language do not permit exact

expression, but which may play an important part in the judge's overall evaluation."

15. It is trite law that matters of weight are for the judge as has been made clear on numerous occasions, in particular by the Court of Appeal in **SS (Sri Lanka) v SSHD [2012] EWCA Civ 155**.

16. Having considered the determination, the application and grounds and the submissions made I have come to the conclusion that the findings made were open to Judge Graham and that no material error on a point of law has been made out. Given the judge's findings, Article 8 was not a relevant factor.

Decision

The original determination did not contain a material error on a point of law and the decision that the appeal be dismissed therefore stands.

Signed Date 04 August 2014

Deputy Upper Tribunal Judge French