



**Upper Tribunal  
(Immigration and Asylum Chamber)**

Appeal Number: OA/11653/2013

**THE IMMIGRATION ACTS**

**Heard at Field House**

**On 8 August 2014  
(ex tempore determination)**

**Determination**

**Promulgated**

**On 12 August 2014**

**Before**

**UPPER TRIBUNAL JUDGE CLIVE LANE**

**Between**

**ANIDA SULI**

Appellant

**and**

**ENTRY CLEARANCE OFFICER - TIRANA**

Respondent

**Representation:**

For the Appellant: Mr S Subbarayon, Legal Representative of Sivaramen

For the Respondent: Mr E Tufan, Home Office Presenting Officer

**DETERMINATION AND REASONS**

1. This is an appeal by Mrs Anida Suli in respect of a determination of the First-tier Tribunal (Judge Birk) which was promulgated on 22 May 2014. The application was made by the appellant to the Entry Clearance Officer in Albania, of which country she is a citizen. She seeks to come to this

country for settlement as the partner of the sponsor, Mr Fran Suli, who is a British citizen. The Entry Clearance Officer's decision is dated 7 May 2013.

2. The appeal was dismissed by the First-tier Tribunal but in dismissing it, the Tribunal made an error of law. That error is contained in the section of the determination at paragraphs 12 to 17. The judge was concerned that there was not sufficient evidence to show that a genuine and subsisting relationship continued to exist between the sponsor Mr Suli and the appellant. He noticed gaps in the record of telephone bills but most importantly he did two things which were incorrect.
3. First, he found that since the marriage of the couple in August 2011 there had been two visits by the sponsor to Albania to visit the appellant whereas it is clear that the evidence before him in the form of a passport or copies of it showed that Mr Suli had visited in 2012 indeed in March of that year.
4. Secondly, the judge excluded Skype record evidence from February 2004 onwards, (this is at paragraph 12 of the determination), which he said was not to be considered because it was not available at the date of the immigration decision.
5. At paragraph 17 the judge stated that:

Overall the evidence amounts to eight months of phone calls and two or maybe three visits to Albania and possibly some photographs of the couple together.
6. The judge should not have excluded the postdecision evidence relating to a matter at issue, namely the subsistence of the relationship between the appellant and sponsor, and in that regard he should have followed the Upper Tribunal decision in *Naz (subsisting marriage - standard of proof) Pakistan* [2012] UKUT 00040 (IAC). That case dealt with post-decision visits made by a sponsor to his spouse abroad but the principle enunciated in the case should have led the judge to include the Skype evidence which he wrongly excluded.
7. In the light of what the judge has said at paragraph 17, he has assessed this case on the basis of an incorrect quantity of evidence and quality of that evidence. He should have looked at more evidence including that which existed post-decision.
8. As a consequence, the First-tier Tribunal erred in law such that his determination falls to be set aside, and I set aside that determination and have remade the decision.
9. I heard evidence from the sponsor, who spoke to me in English and adopted his written witness statement. He was cross-examined by Mr Tufan for the Entry Clearance Officer.

10. The sponsor has explained to me why he finds it difficult now that he works for Northants Cricket Club to get time off work to visit Albania. He has explained to me how difficult it has been to maintain his relationship since his marriage in 2011 but he told me that he has maintained that relationship, which, despite the separation of the appellant and her husband, has not suffered any form of breakdown.
11. The sponsor explained to me the problems he had in obtaining accounts to send with the application and why the Entry Clearance Officer had before him or her only, on the basis of which it was perhaps not surprising that the application was refused. However, referring again to *Naz*, I have considered post-decision evidence and I am satisfied that this is a genuine and subsisting marriage.
12. The sponsor has been able to answer questions put to him in cross-examination, for example, as to why there was no application immediately after the marriage for the appellant to come to this country, and I am satisfied that his explanation, namely that the appellant needed to get ready for and take an English language proficiency test, is entirely valid and reasonable in the circumstances. I am satisfied also that the sponsor has visited Albania in each of the years since the marriage as the passport demonstrates.
13. Looking at the documentary evidence, which again is quite considerable in this case, and having regard to the evidence of the sponsor which I found to be wholly truthful, I am satisfied that there is a genuine and subsisting relationship and on that basis the appeal against the immigration decision of the Entry Clearance Officer should be allowed.

Signed

Date 8 August 2014

Upper Tribunal Judge Clive Lane