



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

Appeal Number: OA/11791/2013

THE IMMIGRATION ACTS

Heard at Field House

Determination

On 25th June & 17th July 2014

Promulgated

On 18th July 2014

Before

UPPER TRIBUNAL JUDGE MARTIN

Between

MS JETMIRA GJINI

Appellant

and

ENTRY CLEARANCE OFFICER - TIRANA

Respondent

Representation:

For the Appellant: Mr D Hayes (Turpin & Miller Solicitors (Oxford))

For the Respondent: Ms A Holmes (25/06/2014) & Mr P Nath (17/07/2014)
(Senior Home Office Presenting Officers)

DETERMINATION AND REASONS

1. This is an appeal to the Upper Tribunal, with permission, by the Respondent with regard to a determination of the First-tier Tribunal (Judge Trevaskis) promulgated on 7th April 2014. For the sake of clarity and continuity however, I shall continue to refer to the Secretary of State as the Respondent and Ms Gjini as the Appellant.
2. The Appellant is a citizen of Albania born on 14th June 1990. She made an application for leave to enter the UK as a spouse under appendix FM of the

Immigration Rules. The application was rejected in a decision dated 7th May 2013.

3. The Appellant appealed and the appeal came before the First-tier Tribunal on 27th March 2014.
4. The refusal was on the basis of the financial requirements contained in the Immigration Rules and also on the basis that the Entry Clearance Officer did not accept the marriage was genuine and subsisting.
5. The Sponsor gave evidence to the First-tier Tribunal. He indicated that he had met the Appellant during a family visit to Tirana in November 2008 and the relationship began the following year. They maintained contact by telephone and by his visits and were married in Albania in January 2012. Since then they have maintained regular contact and have been on holidays together to Turkey. He gave evidence that he sent money to the Appellant and that he is employed as a self-employed licensed taxi driver and has been since 2011.
6. He produced his wedding album to the Judge and printed telephone records from his mobile phone. He produced bank statements but acknowledged that he had not produced his accounts.
7. The Judge allowed the appeal and the Respondent sought and was granted permission to appeal to the Upper Tribunal. Thus the matter came before me on 25th June. My first task was to decide whether the First-tier Tribunal had made an error of law and if so whether and to what extent its determination should be set aside.
8. In his findings the Judge found first that on the basis of Raju & Ors [2013] EWCA Civ 754 he could only take into account documents that were before the Entry Clearance Officer. That is wrong. This is an entry clearance application as a spouse, not a Points Based System application and the Judge was entitled to take into account all the evidence provided that it related to matters appertaining at the date of decision.
9. However despite that the Judge did in fact consider the evidence with regard to the marriage and was satisfied on the basis of the documents and photographs produced and the Sponsor's oral evidence that the relationship was genuine and subsisting and that the couple intended to live together in the United Kingdom.
10. That left the question of the financial provisions and the acceptance by the Sponsor that he had not produced his accounts.
11. The Judge referred to the High Court ruling in MM and others v SSHD [2013] EWHC 190 (Admin.) He noted at paragraph 20 that it had been decided by the Home Office to put on hold decisions in respect of applications which would be refused solely on maintenance provisions and he then decided that the Respondent's decision in this case should await the outcome of MM before the Court of Appeal. He then went on to say at

paragraph 21 that he was allowing the appeal on the grounds that the decision to refuse it was not in accordance with the law or the Immigration Rules or the ruling in MM.

12. Curiously, having so found the judge then allowed the appeal outright under the Immigration Rules. That is plainly wrong. If the Judge thought that the Entry Clearance Officer had failed to follow a policy then the appeal should have been allowed to a limited extent. The Judge in this case, having decided that the Appellant did not meet the Immigration Rules, then allowed it under the Rules.
13. In any event Ms Holmes indicated that the only policy was to hold off any MM decisions until such time as the Court of Appeal had ruled. However this is not an MM case. This is not a case where the sole issue was sufficiency of funds. The Entry Clearance Officer was not satisfied about the relationship itself and also it was not the level of funds that was the issue but the evidence of funds.
14. For those reasons I indicated the grounds were made out. The Judge had made a material error of law. I therefore at the hearing on 25th June set aside the determination preserving only the finding that the couple were in a genuine and subsisting relationship. Ms Holmes did not argue with that conclusion.
15. That left the only issue to be decided as whether or not the Appellant meets the requirements of the Immigration Rules with regard to finance. I adjourned the hearing with directions for a composite bundle to be filed and upon receipt of the composite bundle for the Home Office to file a position statement.
16. Although the Appellant's representative complied with the direction and filed a composite bundle, the Home Office had done nothing further. To be fair to the Home Office, that may partly be due to a failure by the Tribunal to send out my directions.
17. When the matter came before me on 17th July I thus had the benefit of the full bundle of documents provided on the Appellant's behalf which included a detailed skeleton argument prepared by Mr Hayes in which he cross referenced with the bundle the various documents which complied with Appendix FM - SE 7.
18. Mr Hayes having taken us through those, Mr Nath helpfully accepted that the Sponsor had produced the requisite documents to show that the Appellant met the financial requirements of the Immigration Rules.
19. Having found that the Judge of the First-tier Tribunal made a material error of law in his decision and having set it aside I redecide the appeal and allow it under the Immigration Rules.

Signed

Date 17th July 2014

Upper Tribunal Judge Martin