



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

Appeal Number: OA/15998/2013

THE IMMIGRATION ACTS

Heard at FIELD HOUSE

**Decision & Reasons
Promulgated**

On 18 NOVEMBER 2014

On 26 NOVEMBER 2014

Before

**DEPUTY JUDGE OF THE UPPER TRIBUNAL
MS GA BLACK**

Between

**MISS NARMELA PARTAB SINGH
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

ENTRY CLEARANCE OFFICER

Respondent

Representation:

For the Appellant: Mr D Adama-Adams (Counsel instructed by Rest Harrow)

For the Respondent: Mr S Walker (Senior Home Office Presenting Officer)

DECISION AND REASONS

1. This matter comes before me to consider if there is a material error of law in the First-tier Tribunal (Judge Kanagaratnam) determination promulgated on 24th July 2014 in which the appeal was dismissed under the Immigration Rules.
2. The Appellant is a citizen of Guyana and her date of birth is 23rd March 1975. On 2nd July 2013 the Respondent refused her application for entry clearance as a partner under Appendix FM of the Rules.

Background

3. The sponsor travelled to Guyana on 30th January 2013 and married the Appellant on 22nd February 2013. The Respondent considered that there was little evidence of a genuine and subsisting relationship; the relationship was short and there was limited evidence of contact. The Respondent considered the current application on its own merits, although reference was made to similarities with a previous marriage between the sponsor and another Guyanese national which resulted in divorce proceedings after she was refused entry clearance on 10th May 2011.
4. In a determination the Tribunal proceeded on the basis that the sponsor's evidence in general was credible and accepted that his intention was to live with his wife permanently [13]. The Tribunal found documentary evidence referred to as "letters from the Baptist church and other sources produced post decision" were in fact post decision and declined to take it into account. The Tribunal made reference to section 85(5) Nationality Immigration & Asylum 2002 Act ("the 2002 Act").
5. In assessing the intentions of the Appellant, the Tribunal had regard to all of the evidence including the sponsor's evidence, and his claim that she (the Appellant) was a millionaire, that he sent to her \$2000 to establish that he was in a relationship with her, and the photographs of the couple. The Tribunal found the relationship and acquaintance pre marriage to be short and a letter [unsigned] dated 27th March 2013 from the Appellant to be self-serving. The Tribunal placed weight on what it found to be an "almost bizarre" explanation from the sponsor for why his adult children did not attend to give evidence, when they had attended the wedding. The sponsor explained that they would not be aware of the relationship between him and the Appellant. The Tribunal alluded to the existence of a 30 year age gap between the Appellant and the sponsor and also to the fact of a previous marriage that the sponsor had entered into lasting 9 months and ending in divorce in January 2012, just before the current relationship began. The Tribunal found no independent evidence from the Appellant to demonstrate her intentions to live with the sponsor permanently.

Grounds of appeal

6. Ground 1 - the Tribunal misapplied section 85(5) 2002 Act by failing to take into account documentary evidence, letter from Baptist church and other documents dated after the date of decision, found to be post decision. The documents appertained to circumstances in existence at the date of decision.
7. Ground 2 - the Tribunal failed to make adequate credibility findings in respect of the sponsor's evidence. Reliance was placed on **MK(duty to give reasons) Pakistan [2013] UKUT 641(IAC).**

8. Ground 3 - the Tribunal failed to make adequate findings in respect of crucial documentary evidence even though referred to in the determination, for example money remittance evidence, contact and photographs.
9. Ground 4 - the findings that the marriage was short and the letter self-serving were unsustainable findings without more.

Permission

10. Permission was granted by First-tier Tribunal Judge Pooler on 6th October 2014 on all the grounds.

The hearing

11. I heard submissions from Mr Adama-Adams and Mr Walker. Mr Adama-Adams submitted that there were errors of law in the decision; specifically the weight placed on the age gap of 30 years and the negative inference drawn from the failure of the sponsor's adult children to attend the First-tier hearing. I drew to his attention that these issues did not form part of the grounds of appeal advanced. He sought leave to amend his grounds of appeal, which I refused. The Appellant had ample opportunity in which to make a procedurally correct application for leave to amend the grounds of appeal in advance of the hearing. It was too late to do so at this stage, and in any event I was satisfied that the matters raised amounted to disagreement with findings that the Tribunal was entitled to make on the available evidence. I had regard to the fact that the Appellant was not represented at the hearing but that the grounds were drafted by legal representatives.
12. Mr Adama-Adams relied on the second ground of appeal and submitted that the failure to make adequate credibility findings was a significant error. The Appellant was not represented at the hearing. The sponsor attended the hearing and gave evidence. He claimed that he had produced and given to the Judge some 8 cards which the Tribunal looked at and then returned to him. Mr Adama-Adams submitted that the 8 cards formed the post decision evidence referred to in the first ground of appeal and which was evidence of affection between the parties.
13. Mr Walker responded that there had been a full review of the refusal by the Entry Clearance Manager who accepted the marriage was lawful and that the financial requirements were met. There remained concerns as to the genuineness of the marriage. The Tribunal considered all the evidence and made findings on the facts in paragraph 13. The appeal was properly dismissed because there was no independent evidence of the Appellant's intention to live with the sponsor permanently. The Tribunal was entitled to take into account the previous marriage and the failure of the adult children to attend the hearing. The decision made it clear that the documentary evidence in the bundle had been considered, some of which was post decision.

Discussion and decision

14. The Tribunal listed at paragraph 3 of the decision all the documentary evidence considered which included bank statements, telephone cards, photographs, money transfer receipts, property document, letter from sponsor, certificate of disillusionment of marriage and further correspondence. I am satisfied that the Tribunal had regard to all of the listed documentary evidence. There was no submission made by Mr Adama-Adams that the Tribunal failed to consider any other documents, crucial or otherwise as advanced in ground three. I find no error of law in this regard.
15. I now consider the issue of the post decision evidence advanced in ground one. The Tribunal's decision referred to "a letter from the Baptist church and letters from other sources", which it declined to take into account as post decision evidence. Mr Adama-Adams conceded that the letter from the Baptist church was not material. There was some vagueness not only in the decision but also in the grounds of appeal as to what documents were produced that were not taken into account. Mr Adama-Adams produced 8 cards which he stated were handed up to the Tribunal at the hearing and then handed back to the sponsor. He submitted that these were the documents that the Tribunal declined to take into account as post decision evidence. I found no reference to 8 cards in the decision and furthermore the documents identified as post decision in the grounds of appeal are the letter from the Baptist church and other documents dated after the refusal.
16. I was not satisfied that any documents claimed not to have been admitted as post decision, were identified or specified with sufficient particularity in the grounds of appeal and/or at the hearing before me. Mr Adama-Adams introduced the 8 cards which had not hitherto been mentioned.
17. Notwithstanding, I take into account that the Appellant was not represented before the First-tier Tribunal and the lack of specificity in the Tribunal decision as to the documents found to be post decision. I find that the Tribunal did not consider whether the documents appertained to circumstances as at the date of decision, which was an error of law. It falls to me to consider whether or not that was a material error of law.
18. I am satisfied that the Tribunal considered all of the evidence in the round and reached proper findings and conclusions together with reasons in support that were within the range of findings that it was permissible to make on the evidence. It is clear from the decision that what the Tribunal found lacking was any independent evidence of the Appellant's intentions. The Tribunal accepted the sponsor's intentions were genuine but considered that the letter dated 27th March 2013 from the Appellant was not sufficient without more to establish the Appellant's intentions. That together with the negative finding regarding the sponsor's explanation as to why his four adult children did not attend the hearing (of which there can be no criticism having regard to the available

evidence), the finding that the acquaintance between the parties was short and the similarities with the previous marriage, amounted to proper findings and reasons to support the conclusion made. Ground 4 has no merit. Even if the 8 cards and the letter from the Baptist church had been admitted in evidence, I find no basis on which it can be shown that the outcome would have been different. The Tribunal's clear and sustainable conclusion was that there was insufficient evidence as to the intentions of the Appellant. I find no material error of law disclosed.

19. As to the argument in ground two that the Tribunal did not specifically make a findings as to the credibility of the sponsor's evidence, I am satisfied that the Tribunal made sufficient reference to his evidence in the decision and found him to be genuine and believable other than the bizarre explanation as to the failure of the children to attend the hearing. As above, the Tribunal found the evidence lacking as to the Appellant's intentions not those of the sponsor. I find no error of law disclosed.

Notice of Decision

20. **I find no material error of law. The determination shall stand.**

No anonymity direction is made.

Signed

Date 25.11.2014

Judge GA BLACK
DEPUTY JUDGE OF THE UPPER TRIBUNAL

TO THE RESPONDENT **FEE AWARD**

I have dismissed the appeal and therefore there can be no fee award.

Signed

Date 25.11.2014

Judge GA BLACK
DEPUTY JUDGE OF THE UPPER TRIBUNAL