Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: OA/00829/2014**

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 11 September 2015	**On 18 September 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE RAMSHAW

Between

MISS AIZA WAHEED
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

ENTRY CLEARANCE OFFICER
(ISLAMABAD)

Respondent

Representation:
For the Appellant: Mr M A Saeed, Legal Solutions Solicitors
For the Respondent: Ms E Savage, a Home Office Presenting Officer

DETERMINATION AND REASONS

Introduction

1. In this appeal, the appellant appeals against a decision of the First-tier Tribunal dismissing her appeal against a decision taken on 18 December 2013 to refuse her entry clearance to come to the United Kingdom as the partner of a Points-Based System Migrant.

Background Facts

2. The appellant is a citizen of Pakistan who was born on 27 June 1991. She applied for entry clearance under Paragraph 319C of the Immigration Rules HC395 (as amended). That application was refused on the basis that the Entry Clearance Officer was not satisfied that the appellant and sponsor's marriage was subsisting or that that the appellant intended to live with the sponsor throughout her stay in the UK.

Appeal to the First-tier Tribunal

3. The appellant appealed to the First-tier Tribunal. In a determination promulgated on 24 February 2015, Judge Malins dismissed the appellant's appeal. The First-tier Tribunal found that the appellant had failed to show (by a wide margin) that the marriage was subsisting or that the appellant and sponsor intended to live together in the UK.

Appeal to the Upper Tribunal

4. The appellant sought permission to appeal to the Upper Tribunal. The grounds of appeal can be summarised as essentially that, i) the judge erred by failing to take into account the evidence and relevant case-law regarding the relationship between the appellant and sponsor and ii) that the judge was more influenced by the sponsor's immigration history (an irrelevant matter) rather than the relationship. On 24 April 2015 First-tier Tribunal Judge Pooler granted the appellant permission to appeal. Thus, the appeal came before me.

Summary of the Submissions

5. Mr Saeed submitted that the judge had misdirected herself. He asserted that there was an error in the Entry Clearance Officer's decision as it overlooked the visit on 6 April 2013 when the sponsor went to Pakistan and married the appellant. Since April 2013 two further visits have been made, September 2013 and September 2014 but the judge has overlooked these. The sponsor and appellant have been in regular touch – there is considerable evidence in the bundle of e-tickets, daily contact through Skype and the internet and of the joint bank account and of remittances. He submitted that the judge effectively ignored the evidence. Mr Saeed relied on the case of Naz (subsisting marriage – standard of proof) Pakistan [2012] UKUT 00040 (IAC). In that case, at headnote *ii)*, the Tribunal specifically held that post decision visits by a sponsor to his spouse are admissible in evidence in appeals to show that a marriage is subsisting. He also relied on the case of Goudey (subsisting marriage – evidence) Sudan [2012] UKUT 00041 (IAC) in particular headnote *i)* which clarifies that in GA (Subsisting marriage) Ghana [2006] UKAIT 00046 evidence of a subsisting marriage does not require the production of particular evidence of mutual devotion. He submitted that there is no requirement or additional significant burden to show a genuine intention to live together. He submitted that it is clear from the decision that the judge was overly concerned with the sponsor's immigration history. Several paragraphs are devoted to the immigration history. There is

nothing adverse in the sponsor's immigration history. He is in the UK working lawfully. Tier 1 leave is on the basis of income not what job you do. The immigration history is described in a negative way. The judge has been highly critical of the evidence; for example, the wedding photos, the mode of communication and number of visits. The judge failed to take into consideration different cultural values. It is quite common for a husband to live apart from his wife for work. In this case it is the refusal of entry clearance that is keeping the couple apart. The judge was more influenced by the immigration history than the real issue of the subsistence of the marriage.

6. Ms Savage relied on the Rule 24 response and submitted that the judge has taken all the evidence into account. It was not correct that the judge had overlooked the visits – see paragraph 8(d). The judge took the bank account details into account and the remittances post decision but was entitled to note as a fact that there was only one remittance prior to the Entry Clearance Officer's refusal. Post decision evidence is only relevant to what the position was at the date of the refusal. The weight to be attached to the evidence was a matter for the judge. Ms Savage referred to paragraph 7 of the decision in Goudey and submitted that in contrast to the evidence in Goudey in this case the judge found evidence of communication to be limited. With regard to the reliance by the appellant on the case of Naz, Ms Savage submitted that headnote *i)* emphasises that it is for the appellant to establish that the relationship is subsisting. It is open to the judge to attach limited weight to the documents. Although the judge did set out the sponsor's immigration history it is clear from paragraph 9 of the decision that the judge's findings on the subsistence of the marriage was only in respect of the matters considered at sub-paragraphs 8 (c)-(h). The judge heard oral evidence and took that into account. The judge does not need to set out in detail every piece of evidence.

Discussion

7. I have considered in detail the decision of the First-tier Tribunal. Although I am reluctant to go behind the findings of the First-tier Tribunal on an issue of credibility it appears in this case that the judge's view of the sponsor's immigration history has adversely influenced the decision.

8. At paragraph 8 the judge set out the sponsor's immigration history in some detail including making a couple of comments, for example, at sub-paragraph 8 (iv) the judge notes that there is no evidence of the basis on which a two year highly skilled migrant visa was granted.

9. At paragraph 9 of the decision the judge sets out:

> "The findings above show that the appellant has been employed in a modest way for the majority of his study years in the UK and has used every possible device, to prolong his stay"

10. There is nothing in the sponsor's immigration history to support a view that he has *'used every possible devise to prolong his stay here'*. There is nothing in the decision or the evidence on the court file to suggest that the sponsor has had any of his applications refused or has attempted to stay in the UK other than pursuant to lawful grants of leave made by the Secretary of State. It is not a case where the sponsor has attempted to circumvent the Immigration Rules with spurious or fraudulent applications, failed to meet the requirements of the Rules or has breached any conditions of his leave. I accept Mr Saeed's submissions that there is nothing adverse in the sponsor's immigration history. If the Secretary of State was prepared to grant him leave for each application he made then there is nothing adverse to be drawn from his immigration history.

11. The judge also appears to have been influenced by the 'modest' nature of his employment in the UK. This is entirely irrelevant.

12. Ms Savage quite rightly pointed out that at paragraph 9 the judge indicates that the findings in sub-paragraphs 8(c) – (h) are considered separately to the Immigration history. However, those paragraphs do not set out sufficient analysis or reasons to enable the appellant to know why the conclusions were reached.

13. Turning to the evidence in the case, the judge considered that the appellant and sponsor had engaged in a paper producing exercise and found that the appellant (the reference was clearly intended to be to the sponsor) was not a credible witness in any aspect of the appeal. The judge recorded at paragraph 8:

> "I now make the following findings of fact and credibility, which will inform my determination"

14. What follows in the decision does not contain any reasoning as to why the sponsor was not found to be credible or why the judge effectively disregarded all the evidence as a 'paper producing exercise'. The judge has not set out how or on what basis those findings were reached.

15. I accept Ms Savage's submission that the judge took into account the two visits to Pakistan made by the sponsor after the marriage. However, it appears that the judge disregarded those visits as evidence to show that a marriage is subsisting. No reasoning is given for rejecting the visits as evidence to support the subsistence of the marriage at the time of the decision but it would seem that the basis for this might be that the judge considered that the sponsor had made a number of visits to Pakistan over the years that he was in the UK *'no doubt to visit his family'* (para 8(d)(ii)) the inference being that these further visits could not necessarily be attributable to visiting his wife. This appears to be mere speculation on the part of the judge. In order to disregard this evidence some reasons based on evidence ought to have been articulated.

16. The judge considered evidence of remittances but accorded little weight as only one remittance was made prior to the refusal of the appellant's

application. I accept Ms Savage's submission that the judge was entitled to be unimpressed by that evidence.

17. With regard the evidence of communication the judge noted that there were no letters, cards or emails. There were 89 pages of printouts, the significance of which was incomprehensible to the judge, 22 pages of computer screen printouts and a single unnumbered page which was an extract from a telephone bill. Although the evidence was not presented coherently and the telephone bill extract does not indicate between whom the calls were made, it is clear that overall the evidence represents communication via Skype between the appellant and sponsor over a period of months in 2013 and (although to a lesser extent) by telephone over a period in excess of a year. There is no need for other forms of communication in addition.

18. The remaining items of evidence were wedding photos and evidence that a bank account was opened in June 2013 though no balance was given. The fact of the marriage was not in contention so the wedding photos may not have taken the appellant any further. The judge was entitled to place little weight on a bank account that had no evidence of any balance.

Error of Law

19. In my judgement the judge has adopted an irrational view of the sponsor's immigration history leading to the finding that he *'used every possible devise to prolong his stay here'*. In the absence of any reasoning for the judge's conclusions on credibility I am of the view that this erroneous view has tainted the judge's analysis of the evidence. The judge has failed to give sufficient reasons as to how and why she has reached her conclusion on credibility. Further, the judge has misdirected herself as weight to be attached to the documentation relating to the Skype and telephone conversations and the evidence in relation to the visits to Pakistan. The visits to Pakistan and evidence of communication are substantial support for the subsistence of the marriage. In the case of Goudey the Upper Tribunal held (at paragraph 10) that:

> "Parties who intend to conduct a relationship by telephone do not also have to demonstrate that they conduct a relationship by written correspondence in order to show that they intend to live together"

20. At paragraph 12 in Goudey the Tribunal also held that the requirement set out in GA only requires that there is a real relationship as opposed to the merely formal one of a marriage that has not been terminated and that to show that there was a genuine intention to live together does not impose some significant burden to produce evidence other than that showing that there was a genuine intention to live together.

21. Accordingly I find that there has been an error of law in the assessment of this case and the decision is set-aside.

Re-making the decision

22. I therefore re-make the decision. The only issues in terms of failure to meet the requirements of the Immigration Rules were the subsistence of the marriage and intention to live together- Sub-paragraphs 319C (d) and (e). Having considered all the evidence taken as a whole (as set out above) there is sufficient evidence to demonstrate that the marriage is subsisting and that the parties intend to live together. I am therefore satisfied on the evidence that the appellant has met the requirements of Paragraph 319C of the Immigration Rules.

23. I have considered whether any parties require the protection of an anonymity direction. No anonymity direction was made previously. Having considered all the circumstances and evidence I do not consider it necessary to make an anonymity direction.

Decision

24. The decision of the First-tier Tribunal involved the making of an error of law. I set aside that decision.

25. The appellant's appeal against the decision of the Entry Clearance office is allowed.

Signed P M Ramshaw Date 18 September 2015

Deputy Upper Tribunal Judge Ramshaw