



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

Appeal Number: OA/06335/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 18 May 2015**

**Decision & Reasons Promulgated
On 29 June 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE RIMINGTON

Between

**MRS SHABANA JAVED
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

ENTRY CLEARANCE OFFICER - ISLAMABAD

Respondent

Representation:

For the Appellant: Mr Z Ranjha, instructed by Sky Solicitors Limited
For the Respondent: Ms J Isherwood, Home Office Presenting Officer

DECISION AND REASONS

The Appellant

1. The appellant is a citizen of Pakistan and her date of birth is 23 March 1976. She appeals against the decision of the respondent dated 23 April 2014 to refuse her entry clearance to the United Kingdom as a partner of a points-based migrant, Mr Javed Iqbal under paragraph 319C of the Immigration Rules.

2. The Entry Clearance Officer refused the application on the basis that he was not satisfied that the marriage was subsisting and that the parties intended to live with each other in the United Kingdom.
3. The appellant had married the sponsor on 9 May 2012 and had subsequently applied for entry clearance soon after their marriage which was refused owing to a miscalculation of the maintenance. No issue of subsistence was raised by the respondent at that time.
4. In the decision the Entry Clearance Officer stated that:

“I note from our records that your spouse has resided in the UK since September 2009 and I am aware that you have never visited him in the UK. You have provided no photographic evidence with your with your application to demonstrate that you have met your sponsor. You have also provided no documentation demonstrating that you are in regular contact with him and are engaged in an ongoing relationship. Given this coupled with the fact that you have chosen to live in different countries pre and post your marriage means that I am not satisfied that this marriage is subsisting and that you intend to live with your spouse throughout your stay in the UK.” 319C(d)(e).

Paragraph (d) states:

“(d) the marriage or civil partnership or relationship similar to marriage or civil partnership must be subsisting at the time the application is made.

(e) the applicant and the relevant points-based system migrant must intend to live with the other as their spouse or civil partner, unmarried or same sex partner throughout the applicant’s stay in the UK.”

5. In her bundle submitted to the First-tier Tribunal there was a witness statement of the appellant and the sponsor, some telephone schedules, copies of photographs at a wedding and remittance receipts.
6. First-tier Tribunal Judge Chohan determined the matter on the papers at Sheldon Court in Birmingham on 11 February 2015 and dismissed the appeal on both the Immigration Rules and on human rights grounds.
7. An application for permission to appeal was made on the basis that the judge had overlooked and ignored evidence in the form of copies of passport pages of the sponsor to confirm the visits to Pakistan to see his wife, misdirected himself in relation to the telephone records submitted with the application and was wrong to conclude that there was only one money transfer receipt which postdated the respondent’s decision.
8. In essence the judge had failed to take into account all the evidence and had no regard to the statements of the sponsor and the appellant. The judge was inconsistent with the guidance set out in **Goudey (subsisting marriage - evidence) Sudan [2012] UKUT 00041 (IAC)** and had failed

to give sufficient reasons, **MK (duty to give reasons) Pakistan [2013] UKUT 00641 (IAC)**.

9. Permission to appeal was granted by Judge Brunnen on the basis that it was apparent that the judge did not take account of the evidence.

The Hearing

10. At the hearing Mr Ranjha referred to the bundle that was before the First-tier Tribunal and to extensive evidence which was not referred to by the judge. This included remittances, copies of the passport showing the appellant's sponsor entering Pakistan on a yearly basis and various telephone records.
11. The judge did not take into account **Goudey**.
12. Ms Isherwood acknowledged that there was information which was not taken into account by the judge and conceded that this evidence should have been taken into account. Nonetheless, with regards to the telephone communication records, she submitted that the numbers did not correlate.
13. In the circumstances I find that there is an error of law. It is clear that the judge has failed to take into account extensive evidence. He referred to the application made by the wife in the record of submissions but made no finding in relation to that. The judge did not follow **Goudey (subsisting marriage - evidence) Sudan [2012] UKUT 00041**. There were remittances indicated from 3 April 2013 to January 2014 and these were not all alluded to even though they appeared to commence prior to the ECO's decision: indeed the judge stated there was only one remittance and that postdated the decision.
14. Mr Ranjha referred to the telephone numbers.
15. I am satisfied that there was significant evidence which had not been taken into account. This in effect is a procedural error and renders the findings of the judge unsafe.
16. Bearing in mind the nature and extent of findings to be made on all the evidence presented to the First-tier Tribunal I remit the matter to that Tribunal.

Notice of Decision

17. I direct that the matter should be linked to an appeal to be heard in relation to the appellant's husband, that is Mr Javed Iqbal, Appeal Number IA/21372/2014. That appeal is due to be heard on 7 July 2015.
18. No anonymity direction is made.

Signed

Date 26th June 2015

Deputy Upper Tribunal Judge Rimington