



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: OA/16123/2013

THE IMMIGRATION ACTS

Heard at Field House
On 11 February 2015

Decision & Reasons Promulgated
On 6 March 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE RIMINGTON

Between

**MOHAMMAD MAKSUD AHMED MAKON
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

ENTRY CLEARANCE OFFICER

Respondent

Representation:

For the Appellant: Mr M Chowdhury, KC Solicitors

For the Respondent: Miss J Isherwood, Home Office Presenting Officer

DECISION AND REASONS

The Appellant

1. The appellant is a citizen of Bangladesh born on 9 April 1979 and he made an application for entry clearance to the United Kingdom as the partner of Halima Begum which was refused. The respondent was not satisfied that the appellant met the requirements of Appendix FM. In particular the respondent was not satisfied the appellant met the eligibility requirements of the partner under EC-P1.1(d) because he

was not satisfied the claimed relationship between the appellant and sponsor was subsisting or that they intended to live together permanently in the United Kingdom.

2. E-ECP2.6 and 2.10. In addition the sponsor was not satisfied that the appellant met the financial requirements set out in E-ECP3.1. The sponsor was paid in cash and whilst bank statements and wage slips had been provided, the corresponding deposits were made into the bank account at least ten days after payslip date. The Entry Clearance Officer had "concerns" regarding the claimed employment and income. The sponsor's salary slips showed the exact same amount of net pay which should vary slightly, depending on the change of tax payable each month. No P60s for employment had been provided. It was accepted that the sponsor may be employed by SF London Limited but it was not accepted that her income was as claimed. The application was refused under paragraph EC-P1.1(d) of Appendix FM (E-EEC-E.3.1)
3. A further reason for refusal was that appellant had submitted an ESOL entry level certificate in both speaking and listening from City and Guilds dated 5 September 2012 from Test Centre 82146 as evidence of the English language proficiency but the Entry Clearance Officer was not satisfied these documents demonstrated the appellant had passed an English language test in speaking and listening at a minimum level A1 of the Common European Framework of Reference for Languages. Investigations had confirmed that the documents submitted did not reliably demonstrate that she had passed the stated qualification. The application was refused under paragraph EC-P.1.1(d) of Appendix FM of the Immigration Rules.
4. An Entry Clearance Manager's review on 28 April 2014 upheld the Entry Clearance Officer's decision and found that it was noted that the appellant had included two City and Guilds certificates as evidence that she satisfied the requirements of the Immigration Rules but the Entry Clearance Officer had pointed out that investigations conducted by City and Guilds and UK Immigration and Visas Dhaka revealed inconsistencies in testing in Bangladesh. As a result of the investigation the ECO was not satisfied that the documents the appellant had provided demonstrated she had obtained the qualifications mentioned on the certificate. The inconsistencies had been addressed by City and Guilds who agreed to offer retesting to all affected visa applicants and the visa was issued with a letter alongside her refusal notice explaining this and she was offered a gratis retest but no retest had been submitted.
5. In a decision dated 29 September 2014 Judge of the First-tier Tribunal Dean dismissed the appellant's appeal on the basis that there was insufficient telephone evidence before him to demonstrate to the required standard that the appellant and sponsor were in communication after the sponsor left Bangladesh in 2012. The evidence did not advance the appellant's claim that his relationship with his sponsor was subsisting.
6. The appellant appealed on the basis in part that telephone cards could be taken into account and the telephone call record cover page clearly mentioned the sponsor's

name and address and her account number with the company but the judge failed to acknowledge this evidence. The judge failed to make any further findings in relation to the financial requirements and the English language requirement but concluded on the basis of EC-P1.1(d) of Appendix FM of the Rules that the appellant's appeal should be dismissed.

7. Permission to appeal was granted by First-tier Tribunal Judge Shimmin on the grounds that the judge erred in failing to give weight to the phone cards and take into account the telephone call records and the recent travel to see the appellant. It was arguable that the judge should have given weight to the phone cards and telephone call records.

The Hearing

8. At the hearing Mr Chowdhury stated that he had no appellant's bundle and therefore attempted to submit a further bundle which he stated was a copy before the First-tier Tribunal. This, as it transpired, was not the case as there were documents included which were not in the bundle before the judge. It appeared that the indexed bundle before the First Tier Tribunal Judge included pages 1-31 with a Talk Home Call log from 1st February 2014 to 14th May 2014. In addition there were two copies of greetings cards without envelopes and a copy of a TalkTalk account for telephone number 0203 6591073. This included a summary of calls from 1 March 2013 to 31 March 2013 and a TalkTalk account number with the appellant's sponsor's address as being Flat 1, 29 Parkside Estate, Rutland Road, London E9. The latter documentation in relation to telephone calls comprised two pages.
9. Mr Chowdhury submitted that the judge had stated that the telephone cards carried very little weight and this did not follow the guidance of **Goudey (Subsisting marriage evidence) Sudan [2012] UKUT 00041** which confirmed that the evidence of a matrimonial relationship did not require the production of particular evidence of mutual devotion and that evidence of telephone cards was capable of being corroborative of the contention of the parties that they communicated by telephone even if such data could not confirm the particular number the sponsor was calling in the country in question. It was not a requirement that the parties also wrote or texted each other.
10. It was clear from paragraph 10 that the judge accepted the call logs but the judge rejected this evidence and did not place sufficient weight upon it.
11. In paragraph 12 the judge failed to consider post-dated evidence which could be taken into account when deciding that two years had elapsed after the marriage and before the sponsor had made a decision to try and visit him. the parties had been in communication and there was no such separation. The judge had also stated at paragraph 15 that the appellant's wife had failed to give credible evidence in relation to her visits but in fact there was no discrepancy in the evidence. Mr Chowdhury also stated that the address of 120 Park Street could have been confused with 129 Rutland Road because in fact the address was 129 Parkside Estate. I pointed out to

Mr Chowdhury that it appeared that the telephone numbers on the mobile phone log differed from that given in the Visa Application Form of the sponsor's mobile phone.

12. Mr Chowdhury submitted that there had been difficulty in the appellant's sponsor's instructing solicitors but there was no contradiction to Miss Isherwood's submission that no complaint had been made or indeed no evidence had been produced in this regard. Mr Chowdhury also submitted that the judge had failed to consider the two further grounds of projection by the Entry Clearance Officer, that was maintenance and language certificates.
13. The sponsor was twice asked when she commenced work with SF Limited and she confirmed that it was in October 2012 for the first time.
14. Miss Isherwood contested that the appellant could succeed on the basis of the financial requirements because she could not show that she had earned £18,600 in the previous year.
15. Miss Isherwood submitted that there were some money receipts after the date of decision but Mr Chowdhury disputed them although once again the receipts in the further evidence that Mr Chowdhury had compiled did not coincide with those in the Entry Clearance Officer's bundle.

Conclusions

16. Had the judge only relied on the evidence that the telephone cards added little weight to the claim the marriage was subsisting because the cards did not have the name or personal details of the person who used the cards, I would have agreed that there was an error of law. It would appear that these telephone cards were returned to the appellant. However, the judge in a determination which ran from paragraphs 7 to 20 looked at the totality of the evidence before him and considered that the appellant had not submitted evidence to the required standard to demonstrate that he satisfied the relationship requirements.
17. The judge did not confine himself merely to the criticism of the telephone cards (which were not re-presented before me) but noted discrepancies in the sponsor's evidence. He recorded that the sponsor had submitted a witness statement in which she had incorrectly given the year of the marriage being that as 2014 although the marriage took place in 2012, and he noted at [9] of his decision that 'as evidence that the marriage is subsisting the appellant submitted 'two greetings cards, four money receipts and some telephone cards'. He stated with respect to the telephone cards that '*they did not have the name or personal details of the person who used the cards*'. The judge stated that the phone cards added "*little weight to the claim that the marriage is subsisting*" [9]. **Goudey** is proposition that evidence of telephone cards is *capable* of being corroborative of the contention of the parties that they communicate but in these circumstances the judge considered that it was not the case. He considered the evidence of the relationship of the parties in the round and specifically referred to the sponsor's oral evidence.

18. At paragraph 10 he considered the UK mobile telephone logs for the period 1st February 2014 to 14 May 2014. The judge stated that *'this has no account holder name and address and therefore I find that this does not advance the appellant's claim that his relationship with the sponsor is subsisting'*. Indeed, I note that, the mobile number attached to this log did not have the same number that the sponsor gave in her VAF as her mobile number. There was nothing to link this with the sponsor. The grounds of appeal submitted that the appellant and sponsor contacted each other 'regularly' through internet video calls and telephone calls but the telephone evidence prior to the decision and from 2013 was for one month only.
19. There were two pages of telephone evidence (Talk Talk Telephone bill) which had the appellant's sponsor's name and address and the judge referred to this at [18]. It is this evidence that had the sponsor's name and address but this judge identified the inconsistency given in the oral evidence of the sponsor with regards her address and thus rejected this evidence. The judge clearly recorded at [18] that the sponsor when first asked her address responded it was 120 Park Street. Mr Chowdhury submitted that this was not a far cry from 129 Parkside Estate, Rutland Road, but the judge found that this conflicted with the one telephone bill given by the sponsor. I note that the sponsor had a Bengali interpreter at the hearing.
20. Having already noted the telephone cards and telephone records from 2013 and earlier in the year, cards and financial remittances the judge reasoned at [11]
- 'No other evidence of communication, whether written, electronic or telephonic has been submitted to establish that the appellant and sponsor **remain** in contact and I therefore find that when taken in the round, the evidence before me undermines the appellant's claim that his relationship with the sponsor is subsisting'*.
21. The judge did take the evidence of telephone contact into account but placed little weight on it and overall rejected the evidence as the appellant and sponsor appeared to have not *maintained* the contact.
22. The judge did consider the visits made by the sponsor to Bangladesh in that she arrived in Bangladesh on 12 June 2014 and left on 3 August 2014 but considered that there had been considerable lapses in time since the marriage. It was submitted that the application had been made in May 2013 but it was the lack of effort to visit and the explanation for the lack of visits which the judge detailed as being problematical. The judge also took into account the oral evidence to the effect that the sponsor did not visit Bangladesh until she knew of the date of the appeal.
23. It is correct to state, as Mr Chowdhury did, that the visa application was submitted in May 2013 but this does not preclude the sponsor visiting the appellant. In particular, the judge at paragraph 15 identified that the sponsor stated that she had to wait two years because she was working and not given holidays but then contradicted her evidence stating that in fact she was given holidays.
24. In particular, the judge found that overall the sponsor was a *"reluctant witness who gave too implausible explanations for not visiting her husband in Bangladesh"* [16]. The

judge did not state as it claimed in the application for permission to appeal that the couple lost contact with each other between May 2012 and June 2014.

25. Clearly the judge found that the intermittent money receipts added little by way of assistance to support the claim of a subsisting relationship. The judge had referred to the four money receipts and even if he did not specifically identify these separately into his reasoning he clearly found that overall the contact, including just four money receipts from 2012/2013, were insufficient. An overall reading on this is clear.
26. The respondent's decision was made on 6th August 2013 and although it was submitted that the judge did not post decision evidence contrary to **Naz (subsisting marriage - standard of proof) Pakistan** [2012] UKUT 40, that is not the case. At paragraph [10] the judge referred to the mobile phone call log from 1st February 2014 to 14th May 2014 and to the visit made by the sponsor to Bangladesh following the decision. The judge chose not to place much weight on this evidence for the reasons set out but he nonetheless took it into account.
27. From the telephone evidence produced, including that with a landline number, albeit postdating the decision, there was not one direct telephone link between the sponsor and the appellant. In **Goudey** there was evidence not just of telephone cards but also of regular financial remittances and a 'considerable volume of material' which could not be said to be the case before the first tier tribunal. At [10] of **Goudey** the court held that '*the material gives corroborative support for the wife's testimony in the appeal. It is clear that a great many telephone calls have been made using the telephone cards during the prior of the relationship*'. That cannot be said to be the case here and there was no indication that the judge had imposed his own view of how the parties should communicate. The judge heard evidence from the sponsor and found that the evidence before him contained 'inconsistencies and discrepancies' and 'implausible explanation' and that 'looking at the totality of the evidence' the appellant did not succeed.
28. The decision was made on the evidence presented and I do not accept Mr Chowdhury's submission that a finding on the subsistence of the marriage will preclude any further application and it is open to the appellant and sponsor to make a further application on the basis of further evidence. That said I am only considering whether the decision contained an error of law. There was also criticism that the judge had made no findings with respect to the financial and language requirements. That said, I note the independent tax records from HMRC, indicate that the sponsor earned only £12,881 in the tax year 2012-2013. I note the application was made on 5th May 2013. However as I found no error of law regarding the deficiencies in the evidence regarding the relationship, I find this failure by the judge is not material.
29. Overall the judge rejected on the balance of probabilities on the evidence put forward by the sponsor regarding the relationship and based this on the oral evidence in conjunction with the documentary evidence. It was open to the judge to come to the

conclusions that he did on the evidence which was presented to him and overall I find that the reasoning is adequate.

30. I find no error of law which is material and the decision will stand.

Notice of Decision

No anonymity direction is made.

Signed

Date 5th March 2015

Deputy Upper Tribunal Judge Rimmington