



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

Appeal Number: OA/19780/2013

**THE IMMIGRATION ACTS**

**Heard at Manchester  
On 25 February 2015**

**Determination Promulgated  
On 16 March 2015**

**Before**

**UPPER TRIBUNAL JUDGE DAWSON**

**Between**

**SUMAIRA ALI KHAN**

Appellant

**and**

**ENTRY CLEARANCE OFFICER (ISLAMABAD)**

Respondent

**Representation:**

For the Appellant: Mr C Bloomer instructed by Sabz Solicitors

For the Respondent: Mr M Diwnycz, Senior Presenting Officer

**DECISION AND REASONS**

1. This case concerns an appeal by a national of Pakistan against the decision of First-tier Tribunal Judge Herwald. For reasons given in his determination dated 6 June 2014, the judge dismissed the appeal against the Entry Clearance Officer's decision refusing entry clearance to the appellant to come to the United Kingdom as the spouse of a Tier 1 Migrant, Shaukat Khan, whom she had married on 7 May 2013 in Peshawar, Pakistan. The Entry Clearance Officer refused the application in these terms:

“You have indicated that you completed your marriage contract with your husband on 7 May 2013 in Peshawar in Pakistan. You now wish to join your husband who has leave to remain conditions [sic] as a Tier 1 Entrepreneur Migrant under the Points Based System, in the UK. It is reasonable to expect there would be regular contact between a couple in a relationship. However you have not provided any evidence or information to show contact and intervening devotion between you as a couple from either before or since the marriage. As a result I am not satisfied that your marriage was subsisting at the time of your application and that you intend to live with your spouse throughout the period of any leave that may be granted to you in the United Kingdom. 319C(d) and (e).”

2. The sponsor, Mr Khan gave evidence before the judge and provided a comprehensive bundle of documents which the appellant relied on to demonstrate continuing contact since marriage. This took the form of photographs of the wedding event itself and the couple’s honeymoon, a volume of invoices from Three.co.uk, a log of Skype calls and the use of Talk Home cards using an access number which appeared frequently in the Three invoices.
3. The Record of Proceedings indicates that the sponsor was cross-examined by a Presenting Officer and in limited form, the judge set out some of that evidence in [13] of the determination.
4. The findings of fact were prefaced by surprise at the lack of documentary evidence produced by the sponsor. The judge was concerned there was scant evidence of the couple having been in touch before the wedding; his evidence had been that despite it being arranged, it was nevertheless a love match.
5. The judge also expressed concern that the marriage invitation and other evidence that the marriage had taken place was more than a year before the hearing. He observed that whilst evidence of telephone contact “may be valuable and helpful it is, on its own, insufficient in this case”. The judge considered that there was “no evidence whatsoever” to show that using the access numbers provided the appellant had spoken to the sponsor or vice versa and no evidence that she had been in telephone contact with him. He noted that the appellant lives with the sponsor’s family but here also the judge expressed concerns that contact by telephone would not necessarily prove he was in constant contact with his wife and that they were in any sort of subsisting relationship. The judge noted there was no evidence of Skype or Viber communication. He observed there was no evidence that the appellant had visited the sponsor or vice versa nor was there any evidence of remittances and no documentary evidence to support the relationship.
6. I granted permission to appeal expressing the view that it was arguable the judge had failed to make a clear finding on the credibility of the sponsor’s evidence and arguably erred in finding against the appellant based on what he expected by way of evidence rather than what was actually before him.

7. Mr Bloomer adopted these two aspects which he extracted from the grounds of challenge. In essence the judge had given no consideration to what was provided and made his decision on the absence of evidence. The judge had been incorrect in relation to the evidence relating to Skype and Viber. The second ground was that there had been no finding by the judge on the credibility of the sponsor.
8. Mr Diwnycz accepted that the judge had erred in his approach to the evidence particularly as the credibility of the sponsor was not in issue. He accepted that there had been no findings on the sponsor's evidence. I gave my decision at the hearing that I was satisfied the judge had erred on the basis of the two grounds relied on by Mr Bloomer and set aside the decision.
9. As to re-making the decision, Mr Diwnycz indicated that he was content to leave matters in my hands. An extensive bundle of new material had been lodged on behalf of the appellant which he had seen and considered. This included more up-to-date material including regular access via Skype to 27 January 2015 as well as screenshots from Viber. The sponsor clarified his Skype name and that of the appellant. Mr Diwnycz clarified that he did not challenge the evidence of the sponsor nor had he any questions for him.
10. I am readily satisfied from the uncontested evidence provided to the First-tier Tribunal Judge and recently updated that the appellant and sponsor are in a subsisting relationship. There is no challenge to her intentions to remain only for the length of the sponsor's leave which expires on 2 April 2016.
11. Accordingly I set aside the decision of the First-tier Tribunal for error of law. I re-make the decision and allow the appeal against the refusal of entry clearance

Signed

Date 13 March 2015



Upper Tribunal Judge Dawson