



IAC-FH-NL-V1

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

Appeal Number: IA/13754/2014

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 4 March 2016**

**Decision &  
Promulgated  
On 8 April 2016**

**Reasons**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE HILL QC**

**Between**

**SHAHIDUR RAHMAN  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr T Shah, instructed by Taj Solicitors

For the Respondent: Mr L Tarlow, Home Office Presenting Officer

**DECISION AND REASONS**

1. This is an appeal, brought with the permission of First-tier Tribunal Judge Kinnell, from a decision promulgated on 18 August 2015 of First-tier Tribunal Judge Jessica Pacey.
2. The appellant is a citizen of Bangladesh and claimed that he was in a genuine and subsisting relationship with Ms Khanom such as to provide him with the appropriate status to remain in the United Kingdom. Although other matters were in the background, the substantive issue for Judge

Pacey to determine was whether as a matter of fact there was such a genuine and subsisting relationship.

3. In the First-tier Tribunal, the appellant relied on his own oral testimony which supplemented a witness statement. There was also evidence given by Ms Khanom. It is also apparent that three other witnesses were present in the Tribunal and were available to give oral evidence. Those three witnesses are referred to in paragraph 3 of the decision namely Zahed Ahmed, Mohamad Tofayel and Mohammed Maruf Ahmed.

4. The judge recorded at paragraph 3 that these three witnesses:

“... confirmed the contents of their witness statements. Ms Griffiths [Presenting Officer] helpfully confirmed that she did not wish to cross-examine these witnesses so they were not required to give oral evidence”.

It is implicit that the judge herself did not wish to put questions of any of these three witnesses.

5. In a full and reasoned determination the judge states at paragraph 15, “I have also read and taken account of the witness statements and letters written in support of the appellant, which are all in his bundle”. Further, at paragraph 26, the judge says:

“The respondent highlighted in the refusal letter the lack of up to date evidence of their relationship. The appellant has not however addressed this point by the provision of independent evidence of probative value to demonstrate that he and Ms Khanom are in a continuing and genuine relationship.”

6. It is evident both from specific comments of the judge and taking the entirety of the decision holistically that the judge took a somewhat dim view as to the credibility of the appellant’s evidence. Among other things the judge was not impressed by something approaching an asylum claim which the appellant had sought to bring. It is abundantly plain that the judge formed the view that the appellant and Ms Khanom had been distinctly less than candid with the court. The judge came to the conclusion that the genuine and subsisting relationship had not been made out.

7. I have been taken to the three witness statements which were admitted, unchallenged, before the judge and which the judge said she took into account.

8. First, at page 86 of the appellant’s bundle is a letter written by Mr Mohammed Tofayel Sattar who it has now been confirmed is the Mohamad Tofayel referred to above. I can disregard that letter in its entirety because as Mr Shah very fairly and properly accepted before me in his oral

submissions there is nothing within that letter which touches on the nature of the relationship between the appellant and Ms Khanom.

9. The other two witness statements do touch upon that relationship. The first is that of Mohammed Maruf Ahmed which begins at page 14 of the appellant's bundle. Paragraph 4 reads as follows:

"When I first met the appellant his immigration status was not an issue. I always believed he was settled in the UK and this subject we never discussed between us. It is within my personal knowledge for long time he has a relationship with Mrs Aysha Khanom and they subsequently married. On many occasions I saw them together in many different types of activities where I also attended."

Then at paragraph 7:

"The appellant has shared his personal life with me in particular he lost his parents, his wife is very upset in relation to his unsettled immigration status, his wife's family not accepted their marriage. I feel that this appellant's matter may be considered on humanitarian grounds. Further I feel that his continuous presence in the UK is a benefit of kind to the large Bangladeshi community living in the Midlands area. He has the ability to expand his ability and skills outside the Bangladeshi community but his current immigration status is preventing him from doing so. He informed me that he is unable to take any paid employment and also cannot do many official dealings without his immigration status."

10. Finally there is the witness statement of Zahed Ahmed. This is even shorter and I will read it into this judgment in full:

- "1. The appellant in this matter known to me for long time as a community based friend. As friend he shared many of his personal matters with me such he lost his parents, problems in his marriage life and lack of immigration status.
2. I own the freehold of 105 St. Saviours Road, Birmingham B8 1HN. The appellant previously lived at this address and his wife also shared the accommodation with him. He no longer living at my address.
3. Subject to any unforeseeable events it is my intention to come to the Court and give my oral evidence.
5. I request the Court and the Home Office please consider all the circumstances and allow him to remain in the UK as his future home."

11. It was also suggested by Mr Shah in oral argument that each of those witnesses might have been in a position to give further oral evidence but they were not invited to do so. The question for me to determine sitting as a reviewing judge in the Upper Tribunal is not a re-evaluation of the factual situation but whether a material error of law can be demonstrated on the face of the judge's decision.
12. Having looked at the matter with some care and considered the material which Mr Shah suggests might have been overlooked or not given sufficient weight by the judge, I am of the view that this is not a case where a material error of law can be demonstrated. To my mind this is a careful and balanced judgment by an experienced First-tier Tribunal Judge for whom the assessment of the credibility of the appellant and Ms Khanom was of some significance. The judge properly made reference to the three witness statements and repeated, albeit in a slightly pro forma way, that she had had regard to all the evidence and documents which were in front of her.
13. I have read the content of the witness statements into this judgment because in my assessment what is said within those statements is so minor and peripheral that it could have had no bearing on the eventual outcome. The judge properly took it into account but nonetheless came to the conclusion which she did. In an ideal world, as a counsel of perfection, it might have been preferable for the judge expressly to rehearse and then reject the very limited evidence in the statements but in my view there is nothing of "probative value" to have assisted the appellant in his claim. The determination the judge came to sits comfortably with what is said in paragraph 26:

"The respondent highlighted in the refusal letter the lack of any up to date evidence of their relationship. The appellant has not however addressed this point by the provision of independent evidence of probative value to demonstrate that he and Ms Khanom were in a continuing and genuine relationship."

12. What is said in the two witness statements to which I have made reference does not in any way amount to probative evidence in this regard. Issues of credibility and issues of the weight to be afforded to different items of evidence are entirely within the province of the First-tier Tribunal judge to decide. The conclusions she came to were open to her on the evidence she both heard and read. Her decision is unimpeachable and it follows that this appeal must be dismissed.

### **Notice of Decision**

The appeal is dismissed.

No anonymity direction is made.

Signed *Mark Hill*

Date

23 March 2016

Deputy Upper Tribunal Judge Hill QC