Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: HU/02865/2016**

THE IMMIGRATION ACTS

Heard at Bradford UT	**Decision & Reasons Promulgated**
On 17th April 2018	**On 27th April 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE ROBERTS

Between

HARPREET KAUR
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

ENTRY CLEARANCE OFFICER

Respondent

Representation:

For the Appellant: Ms Faryl, Counsel,
For the Respondent: Mrs R Pettersen, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant, a citizen of India, born 13th August 1985, appeals with permission against the decision of a First-tier Tribunal (Judge Mensah) dismissing her appeal against the decision of the Entry Clearance Officer (ECO) to refuse her entry as the spouse of Ravinder Singh Rai, "the Sponsor", a man settled here.

2. The appeal before the First-tier Tribunal was brought on one ground only, namely that the ECO's refusal contravened Section 6 of the Human Rights Act in that it was a disproportionate interference with the Appellant's

Article 8 ECHR right to family life. The date of the ECO's decision is 4th January 2016.

3. The following facts were not disputed. The Appellant and Sponsor married on 20th March 2015 in an arranged marriage in India following which the application for entry clearance was made on 15th December 2015.

4. In considering the application, the ECO said he was satisfied that the Appellant fulfilled the Immigration Rules with one exception. He was not satisfied that the marriage between the parties was a genuine and subsisting one. He came to this conclusion on the basis that the only evidence of contact between the parties following the marriage, was in the form of money transfer receipts and one birthday card. He therefore refused the application under the Immigration Rules.

5. The ECO then went on to look at Article 8 ECHR, but having decided that the Appellant and Sponsor were not in a genuine and subsisting marriage, concluded that there was nothing exceptional in the application which would warrant consideration outside the Rules.

The FtT Hearing

6. The Appellant appealed the refusal to the First-tier Tribunal. Before the FtT, the Sponsor attended and gave oral evidence. The FtTJ recorded that the Sponsor said that he had visited his wife twice since the marriage and he supplied photographs evidencing those visits. In addition, mobile phone records were filed showing continuing contact between the parties.

7. The FtTJ then said the following at [13]:

> "The decision of the Entry Clearance Officer was concerned with whether there was a genuine and subsisting family life. It is clear the decision was correct at the time as there was so little evidence filed with the application. I have no jurisdiction to remake the immigration decision and this matters (sic) comes before me as a human rights appeal only."

8. She followed this up at [14] saying:

> "However, the starting point is whether I find there is a family life between the sponsor and the appellant. I have ample evidence from the sponsor and his family showing he has not only had contact with his wife but visited her twice since they married. I am entirely satisfied they have a genuine and subsisting family life."

9. The judge then however went on to dismiss the appeal. The Appellant appealed to the Upper Tribunal, and thus the matter comes before me to determine whether the First-tier Tribunal's decision contained such error of law that it requires to be set aside and remade.

UT Hearing

10. I heard brief submissions from Ms Faryl for the Appellant and Mrs Pettersen for the Respondent. At the end of those submissions, I indicated that I was satisfied that the FtT's decision contained error of law because the FtTJ's approach to the evidence before her was incorrect. This led her to fail to recognise that she was dealing with a human rights appeal in an entry clearance case. Having made a clear finding that she was satisfied that the parties have, as she termed it, a genuine and subsisting family life she should have gone on to decide whether or not the Appellant could be said now to meet the Immigration Rules. A positive answer to that question would provide great weight to be attributed to the Appellant's case when considering whether Article 8 is met. This failure I find amounts to a material error requiring the FtT's decision to be set aside.

11. Having informed the parties that the FtTJ's decision was set aside and on being told that there was no further evidence to be served, I was satisfied that I was in a position to remake the decision. I preserved the finding that the parties have a genuine and subsisting family life.

12. The starting point in this matter is whether the Appellant could be found to fulfil the Immigration Rules. What is required in this appeal is an evaluation of the post-decision evidence referenced by the two visits made by the Sponsor to the Appellant together with the phone records showing continuing contact.

13. As this appeal is an Article 8 appeal against a decision refusing entry clearance, Section 85A(2) of the Nationality, Immigration and Asylum Act 2002 applies such that:

> "The Tribunal may consider only the circumstances appertaining at the time of the decision."

Section 85(4) of the 2002 Act says the Tribunal may:

> "Consider evidence about any matter which it thinks relevant to the substance of the decision, including evidence which concerns a matter arising after the date of the decision."

14. Subsequently obtained evidence, including evidence of post-decision events is admissible, providing that it relates to "circumstances appertaining at the time of the decision." As the IAT pointed out in **DR Morocco, [2005] UKIAT 00038** it is on that basis that evidence of "intervening devotion" between the date of decision and hearing is admissible as it reflects on the intention of the party in a marriage case at the date of the decision.

15. I find that the evidence of intervening devotion sheds a light on the relationship between the parties to the marriage and enables me to conclude that the parties have a genuine and subsisting relationship. This then leads me to conclude that the Appellant fulfils the requirements of the Immigration Rules, there being no other matters in issue under the Rules.

16. The fact that the Appellant is able to fulfil the Rules must rank as a weighty factor in determining whether the interference with the Appellant's human rights is a proportionate one. There was nothing further of note set out by the ECO on why the decision was refused. The refusal was solely on the basis of the genuineness and subsistence of the marriage. Accordingly I am satisfied that the refusal amounts to a disproportionate interference with the Appellant's and Sponsor's Article 8 ECHR rights. I remake FtTJ's decision by allowing the appeal.

Notice of Decision

The decision of the First-tier Tribunal promulgated on 19th July 2017 is set aside for legal error. I remake the decision under Article 8 ECHR. The appeal of Harpreet Kaur against the Entry Clearance Officer's refusal to grant her entry clearance as the spouse of Ravinder Singh Rai is allowed.

No anonymity direction is made.

Signed C E Roberts Date 25 April 2018

Deputy Upper Tribunal Judge Roberts

TO THE RESPONDENT
FEE AWARD

I make no fee award. I was not asked to make one.

Signed C E Roberts Date 25 April 2018

Deputy Upper Tribunal Judge Roberts