



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

Appeal Number: HU/03373/2015

**THE IMMIGRATION ACTS**

**Heard at Manchester  
On 5<sup>th</sup> January 2018**

**Decision & Reasons Promulgated  
26<sup>th</sup> January 2018**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE D N HARRIS**

**Between**

**MR MOHAMMED SUHEL KHA  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mr D Marrington, legal representative

For the Respondent: Mr C Bates, Home Office Presenting Officer

**DECISION AND REASONS**

1. The Appellant is a citizen of Bangladesh born on 15<sup>th</sup> July 1979. The Appellant applied for entry clearance to enter the United Kingdom as a partner under Appendix FM of the Immigration Rules. That application was refused by the Entry Clearance Officer on 29<sup>th</sup> July 2015. The Appellant appealed under Article 8 and the appeal came before Judge of the First-tier Tribunal Dearden sitting at Bradford on 22<sup>nd</sup> February 2017. In a decision and reasons promulgated on 8<sup>th</sup> March 2017 the Appellant's appeal was dismissed. Grounds of Appeal were lodged to the Upper Tribunal on 30<sup>th</sup> March 2017. On 7<sup>th</sup> September 2017 First-tier Tribunal Judge Chamberlain

granted permission to appeal. Judge Chamberlain noted that the grounds asserted that the judge had erred in failing to make a clear finding on the credibility of the Sponsor, in taking into account relevant factors, namely the failure of the Appellant to apply for a visit visa in order to visit the Sponsor and in failing to consider relevant factors, namely the visits by the Sponsor to the Appellant, the medical evidence, the phone cards and the Sponsor's witness statement. Judge Chamberlain considered that it was arguable that the judge had erred in her consideration of the evidence and that she had failed to give reasons for why she attached no weight to the Sponsor's evidence. The judge appeared to have focused on the documents before her and had arguably not considered the evidence in the round. Judge Chamberlain considered it was arguable that the judge had taken into account irrelevant factors, in particular the fact that the Appellant had not applied for a visit visa to come to the UK and had made no reference to the visits made by the Sponsor to see the Appellant. The Respondent had refused the Appellant's application on one ground only, namely the genuine and subsisting nature of the relationship and the judge's failure to give proper consideration to the Sponsor's evidence in these circumstances was arguably an error of law.

2. On 13<sup>th</sup> October 2017 the Secretary of State responded to the Grounds of Appeal under Rule 24. It was submitted therein that the judge had assessed the claim holistically and had taken into account all relevant factors.
3. It is on that basis that the appeal comes before me to determine whether or not there is a material error of law in the decision of the First-tier Tribunal Judge. The Appellant appears by his instructed legal representative, Mr Marrington. Mr Marrington is familiar with this matter. He appeared before the First-tier Tribunal and I understand he is the author of the Grounds of Appeal. The Secretary of State appears by her Home Office Presenting Officer, Mr Bates.

## **Submission/Discussion**

4. It was pointed out to me at the outset by the legal representatives that the only Ground of Appeal is one based upon Article 8 of the European Convention of Human Rights. Mr Marrington relies on the grounds put forward. He accepts that the First-tier Judge is entitled to make factual findings. He submits that at paragraph 18 the judge has taken into account all factors and has made findings against the lack of a visit visa application. He submits that this would have been a pointless exercise and is therefore irrelevant and that the judge had made findings paragraph 18(3) that the Appellant did not wish to come to the UK.
5. Further at paragraph 18(5) of the judge's reasons he has said  
"The photographs could all have been taken during the Sponsor's visit between 15<sup>th</sup> July 2013 and 30<sup>th</sup> August 2013 for all I know, but the

Sponsor seems unable or unwilling to give a date to any of the photographs produced.”

In making this finding Mr Marrington submits that the judge failed to take into account the evidence before him and that although the photographs were not individually dated on the instructions of the Appellant the photographs were grouped in the Appellant’s bundle according to the year taken. He submits that the general principles set out in *TK (Burundi)* have been misapplied.

6. Mr Bates relies on the Rule 24 response. He submits that the lack of phone cards does not amount to a disagreement with the application of *TK (Burundi)*. He submits that the Sponsor may not be relying on phone cards but if it come out in the hearing that one card existed by way of corroborative evidence then therefore the judge was entitled to make an adverse credibility finding.
7. At paragraph 18(4) it had been accepted by the judge that the Sponsor had been to Bangladesh and that the Secretary of State is not saying there should have been a later visit visa application but that the Appellant and the Sponsor had been married for some three and a half years and he had never made an application to visit his wife.
8. Mr Marrington responds that the issue of the visit visa must be seen in context of the 2017 hearing, pointing out that the original refusal was in 2017 and most of the time has been taken up post-refusal.

## **The Law**

9. Areas of legislative interpretation, failure to follow binding authority or to distinguish it with adequate reasons, ignoring material considerations by taking into account immaterial considerations, reaching irrational conclusions on fact or evaluation or to give legally inadequate reasons for the decision and procedural unfairness, constitute errors of law.
10. It is not an arguable error of law for an Immigration Judge to give too little weight or too much weight to a factor, unless irrationality is alleged. Nor is it an error of law for an Immigration Judge to fail to deal with every factual issue of argument. Disagreement with an Immigration Judge’s factual conclusion, his appraisal of the evidence or assessment of credibility, or his evaluation of risk does not give rise to an error of law. Unless an Immigration Judge’s assessment of proportionality is arguable as being completely wrong, there is no error of law, nor is it an error of law for an Immigration Judge not to have regard to evidence of events arising after his decision or for him to have taken no account of evidence which was not before him. Rationality is a very high threshold and a conclusion is not irrational just because some alternative explanation has been rejected or can be said to be possible. Nor is it necessary to consider every possible alternative inference consistent with truthfulness because

an Immigration Judge concludes that the story is untrue. If a point of evidence of significance has been ignored or misunderstood, that is a failure to take into account a material consideration.

### **Findings on Error of Law**

11. This case turns entirely under Article 8 as to whether or not there was a valid subsisting marriage. The starting point for this decision is to look at paragraph 20 of the judge's decision where she has concluded

"It would be very unusual for a husband and wife not to have family life together but for the reasons given above I simply do not accept that this couple do have family life together; that drives me to dismiss the appeal under Article 8. The first two *Razgar [2004] UKHL 27* questions are not satisfied."

12. For the reasons given below I find there is no material error of law and that the judge was entitled to make these findings. It is contended by Mr Marrington on behalf of the Appellant and the Sponsor that the judge has failed to give due and proper consideration to the fact that there have been visits by the Sponsor to Bangladesh and has put far too much emphasis on the failure of the Appellant to make a visit visa application to see his spouse. With respect to Mr Marrington that is actually not the case. At paragraph 18(4) the judge has stated

"I accept that the Sponsor has been to Bangladesh on two occasions since the marriage".

The judge has looked at all the evidence in the round. He concluded that there was no cogent explanation as to why the Appellant has not sought to make a visit to the UK and whilst appreciating that at the date of refusal of the application the duration of the marriage was substantially less than it was at date of hearing, the judge has made findings which I am satisfied she was entitled to. Further the judge has made findings with regard to the issue of the photographs that were produced. It was open to the judge to make those findings. No evidence was produced as to when the photographs were taken and it was open to the Sponsor to give oral evidence to the judge. Further there were no witness statements from any other family members and the judge was not asking for any issues of intimate knowledge. The judge was entitled to take a view in the manner in which she did. Whilst the issue of phone cards is acknowledged by the legal representatives to be of limited relevance to this appeal the judge was entitled to make findings that they were not detailed nor provided albeit that that in itself may not be determinative.

13. The judge was entitled to make the findings in the manner in which she did looking at the matter in the round to make an assessment of the Sponsor's credibility. Further reference is made to *TK (Burundi)*. In *TK (Burundi) v the Secretary of State for the Home Department [2009] EWCA Civ 40* the Court of Appeal held that the failure of the Appellant to produce supporting evidence that the Tribunal considered should have been readily available was a sustainable reason for not accepting the credibility of the

overall account. That seems to be part of the judge's reasoning in this case and reasoning that the judge was perfectly entitled to make.

14. This is a well constructed and well put together decision. The judge has quite properly at paragraph 19 assessed where the burden of proof lies and at paragraph 20 made findings she herself admits are unusual but based on the evidence and an assessment thereof which she has quite properly undertaken are findings that she was entitled to make. In such circumstances the decision contains no material error of law and the appeal is dismissed and the decision of the First-tier Tribunal Judge maintained.

### **Notice of Decision**

The decision of the First-tier Tribunal Judge discloses no material error of law. The Appellant's appeal is consequently dismissed and the decision of the First-tier Tribunal Judge is maintained.

No anonymity direction is made.

Signed

Date: 22<sup>nd</sup> January 2018

Deputy Upper Tribunal Judge D N Harris

### **TO THE RESPONDENT FEE AWARD**

No application is made for a fee award and none is made.

Signed

Date: 22<sup>nd</sup> January 2018

Deputy Upper Tribunal Judge D N Harris