



**Upper Tribunal  
(Immigration and Asylum Chamber)  
HU/06395/2016**

**Appeal Number:**

**THE IMMIGRATION ACTS**

**Heard at Field House**

**On 23 March 2018**

**Decision & Reasons  
Promulgated  
On 29 March 2018**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE WOODCRAFT**

**Between**

**MR CHAUDHURY SHARJEEL IFTIKHAR  
(ANONYMITY ORDER NOT MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Ms K Wass of Counsel

For the Respondent: Mr S Walker, Home Office Presenting Officer

**DECISION AND REASONS**

**The Proceedings**

1. The Appellant is a citizen of Pakistan born on 10th of February 1993. His appeal against a decision of the Respondent dated 18<sup>th</sup> of February 2016, to refuse to grant leave to remain in the United Kingdom under Appendix FM of the Immigration Rules, was allowed by Judge of the First-tier Tribunal Sweet sitting at Taylor House on 19th of July 2017. The Respondent appeals with leave against that decision. Although this matter comes before me as an appeal by the Respondent, as I have dismissed the Respondent's appeal for the reasons which I set out below,

I shall continue to refer to the parties as they were known at first instance for the sake of convenience.

2. The Appellant came to the United Kingdom in 2012 as a Tier 4 (general) student with leave until 12<sup>th</sup> of August 2013 which was subsequently extended on two occasions until 8<sup>th</sup> of April 2016. In November 2012 the Appellant met his wife Sauda Talawi Abubakr, a person present and settled in the United Kingdom (“the Sponsor”). She is a Filipino national born on 14<sup>th</sup> of October 1969 who has indefinite leave to remain in the United Kingdom. The couple married on 26<sup>th</sup> of October 2015 and the Appellant applied for leave to remain as the spouse of his Sponsor on 19<sup>th</sup> of November 2015. They attended a marriage interview with the Respondent on 10<sup>th</sup> of February 2016.
3. The Respondent refused the application partly because there were said to be discrepancies in the marriage interviews and partly because of the age gap between the parties of some 23 years. As a result, the Respondent did not accept that the marriage was genuine and subsisting. She refused the application on the grounds that the Appellant could not meet section E-LTRP 1.10 of Appendix FM (of the Immigration Rules (the requirement to demonstrate an intention to live together permanently in the United Kingdom)). There were no exceptional circumstances justifying the claim to be allowed outside the Rules under Article 8.
4. At the hearing before the First-tier Tribunal both the Appellant and Sponsor attended and gave oral testimony. They also relied on the oral evidence of a witness Mr Naveed Ahmed a friend of the Appellant’s who had known the Appellant since 2012 and the Sponsor since 2013.
5. The Respondent argued that there were no statements from the Appellant’s relatives in the United Kingdom and the Sponsor had produced no witnesses of her own to confirm the relationship. There was also said to be a lack of evidence regarding the relationship prior to the marriage. The Appellant and the Sponsor told the Judge that they conversed in English with each other and had common religious beliefs. They argued that there were no inconsistencies in their evidence.
6. At [28] to [32] the Judge gave his reasons why he was allowing the appeal. He had some sympathy for the Respondent’s concerns about the genuineness of the relationship finding the age gap of over 23 years to be significant. At [31] and [32] the Judge wrote: “while I can understand why the Respondent concluded that this was a marriage of convenience because of the apparent discrepancies in the marriage interview, I am not persuaded that those discrepancies are of sufficient magnitude for that conclusion to be reached. There is evidence of their relationship before their marriage, by way of text messages but there is also independent evidence from Naveed Ahmed (who gave evidence before me) but also from Lalaine Pineda and Feliza Cabaong as to their ongoing relationship. Taking all these factors into account, I conclude that this was not a marriage of convenience and therefore the Appellant can meet

the requirements of the Immigration Rules in respect of eligibility. The appeal should therefore be allowed.”

7. The Respondent appealed against that decision arguing that the Respondent had merely concluded that the relationship between the Appellant and Sponsor was not genuine and subsisting on the basis of the interview between the parties. The Respondent only had the burden of proof in an EEA case whereas in an application for leave under the Immigration Rules the burden of proof was on the Appellant to show that the marriage was genuine. The Judge had reversed the burden of proof in this case. Had the Judge directed himself properly he may well have come to a different conclusion.
8. Permission to appeal was granted by Judge of the First-tier Tribunal Robertson on 17th of January 2018. She found arguable merit in the grounds because the Judge appeared to have accepted that the burden was on the Respondent to prove that the marriage was one of convenience when the burden of proof was on the Appellant. Judge Robertson suggested that Judge Sweet had not been helped by the submissions made by the Presenting Officer that the burden of proof was on the Respondent as to the genuineness of the relationship but thereafter the burden shifted onto the Appellant.
9. I note here that that is in fact the correct test. Judge Sweet had gone on to say that the burden of proof was on the Appellant in respect of the application. The burden of proof (I assume the Judge meant the initial burden) in respect of a marriage of convenience was on the Respondent but once that burden had been satisfied the burden of proof then reverted to the Appellant.
10. The Appellant replied to the grant pursuant to rule 24 arguing that Judge Sweet had commenced his findings at [28] of the determination with the acknowledgement that the burden of proof was on the Appellant. The determination made no further reference thereafter to the burden being on the Respondent. The Judge had supported his conclusions that the marriage was genuine by reference to the couple’s shared language, evidence of their relationship before marriage, text messages and independent evidence. The Judge made clear positive finding which did not indicate an error of law.

## **Findings**

11. As a result of the grant of permission the matter came before me to determine in the first place whether there was a material error of law in the decision of the First-Tier Tribunal such that it fell to be set aside. If there was not then the decision of the First-tier Tribunal would stand. For the Respondent the Presenting Officer acknowledged that the argument in the grounds as to the burden of proof applied by the Judge was not a strong one.

12. I indicated to the parties that although the decision of the Judge was not particularly detailed, it was sufficient to support the Judge's view that the marriage was genuine and subsisting and I did not find a material error of law in the determination. I was therefore proposing to dismiss the Respondent's appeal and uphold the decision of the First-tier Tribunal. There was no objection to this course of action from the Respondent.
13. The Judge correctly identified that the initial burden of proof of establishing a prima facie case that the marriage was one of convenience rested on the Respondent. That burden had been discharged by the Respondent's concerns over the text of the interviews and the age gap. The burden thereafter shifted onto the Appellant to show on the balance of probabilities that this was a genuine and subsisting relationship. The Judge gave his reasons at [31] and these, I find, were sufficient to indicate to the losing party (the Respondent) why she had lost.
14. It was a matter for the Judge to decide what weight should be placed on the evidence of the supporting witnesses, two of whom were not in fact called to give evidence but made statements in support. Another Judge might have placed less weight on that evidence but that would not of itself indicate a material error of law on the part of the First-tier Tribunal. I remind myself that the Judge had the benefit of hearing the oral evidence of the Appellant, Sponsor and Mr Ahmed and that it was a matter for him to decide whether that evidence crossed the appropriate threshold of the standard of proof. The Respondent's appeal in this case is a mere disagreement with the result and does not indicate a material error of law in the determination. I therefore dismiss the Respondent's appeal against the decision of the First-tier Tribunal.

**Notice of Decision**

The decision of the First-tier Tribunal did not involve the making of an error of law and I uphold the decision to dismiss the Respondent's appeal

Respondent's appeal dismissed

I make no anonymity order as there is no public policy reason for so doing.

Signed this 26<sup>th</sup> of March 2018

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Judge Woodcraft  
Deputy Upper Tribunal Judge

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

As I have dismissed the appeal the fee award made by the First-Tier Tribunal will stand.

Signed this 26<sup>th</sup> of March 2018

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Judge Woodcraft  
Deputy Upper Tribunal Judge