



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: OA/16403/2012

**THE IMMIGRATION ACTS**

Heard at Bennett House, Stoke  
On 19<sup>th</sup> August 2014

Determination Promulgated  
On 16<sup>th</sup> September 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE GARRATT

Between

DITJONA MUSTAFARAJ  
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Ms F Shaw, of Counsel instructed by Karis Law  
For the Respondent: Mr A McVeety, Senior Home Office Presenting Officer

**DETERMINATION AND REASONS**

**Background**

1. On 26<sup>th</sup> March 2014 Judge of the First-tier Tribunal White gave permission to the appellant to appeal against the determination of Judge of the First-tier Tribunal I Ross in which he dismissed the appeal against the decision of the respondent on 26<sup>th</sup>

July 2012 to refuse leave to enter as a spouse in accordance with the provisions of paragraph 281 of the Immigration Rules. The sole issue before the judge was whether or not the parties intended to live permanently with each other and the marriage was subsisting.

2. With reference to the grounds of application Judge White thought it arguable that Judge Ross had erred in failing to take into account or make adequate findings with regard to evidence listed in sub-paragraphs (vi) to (vii) of the grounds. In particular it was contended that the judge had made no reference to 30 pages of photographs of the parties together in Albania, had failed to give reasons for not accepting the sponsor's claim to have visited his wife in Albania and failed to take into account Skype records showing lengthy telephone calls between the parties.

### **Error on a Point of Law**

3. Mr McVeety reminded me that a response had been submitted contending that the judge had directed himself appropriately and made reasonable sustainable findings. However he frankly indicated that the judge's negative conclusions in paragraph 11 of the determination appeared problematic in view of the significant number of photographs of the parties together. He also conceded that, although the telephone text messages had not been translated for the purpose of the hearing before the First-tier Tribunal they were still capable of showing large numbers of communications between the parties. In concluding his submissions Mr McVeety added that, in the light of the grounds, he also had to concede that the findings of the judge were inadequately reasoned.
4. Ms Shaw confirmed that the appellant relied upon the grounds which she did not seek to repeat.
5. After considering the matter for a few moments I announced that I was satisfied that the determination showed errors on points of law such that it should be re-made. My reasons for that conclusion follow.
6. The judge was faced with a considerable amount of evidence capable of supporting the claim that the parties were in a subsisting relationship on the basis explained in *Goudey (subsisting marriage – evidence) Sudan* [2012] UKUT 00041(IAC). This included evidence of Skype phone calls and a very significant number of photographs of the parties together. Yet the judge does not give adequate reasons for dismissing this evidence before concluding that the parties were not in a subsisting relationship. The judge reaches two conclusions in paragraph 11 of the determination which can be regarded as irrational in the legal sense. First he dismisses the sponsor's frequent visits to Albania from May 2011 as evidence of the relationship on the basis that the sponsor, now a British citizen, still has ties to Albania when such visits could count as clear evidence of the subsistence of the relationship. Second, the judge regards it as a factor pointing to incredibility that the settlement application was made within two weeks of the marriage when such an application would normally be regarded as highly supportive of the relationship.
7. Perhaps of greater significance is the judge's rejection of the Skype telephone conversations simply because they had not been translated. The records clearly show to whom the calls were made and the frequency of such calls. This information

is given in English. The judge has not adequately explained why such evidence had to be rejected in these circumstances. The determination also makes no reference to the numerous photographs showing the parties together in several different locations. The appellant is recognisable from her visa application. As it is well established that such evidence is capable of supporting the existence of a relationship, the judge's omission of reference to this evidence is material.

8. The errors I identified lead me to conclude that the determination cannot stand and should be re-made. I so stated

### **Re-making the Determination**

9. After reaching the above conclusion I continued by hearing very brief submissions from both representatives. Mr McVeety made no further submissions save to agree that it would be appropriate for me to allow the appeal in the light of the evidence submitted. Ms Shaw concurred.
10. Prior to the hearing before me representatives had submitted translations of the Skype telephone messages along with a printout of further messages taking place between the parties and further photographs. The translation clearly showed the use of terms of affection between the parties. It would be difficult to dismiss such evidence on the basis that it did not show a subsisting relationship between husband and wife. There was also evidence in the form of a money transfer receipt and pay information for the sponsor showing annual earnings in excess of £21,000 per year although maintenance was not an issue in the respondent's refusal.
11. Having regard to the original evidence in statement and documentary form before the First-tier Judge and the fresh evidence submitted to show the circumstances appertaining at the time of the respondent's decision, I was able to conclude, without difficulty, that the parties met the relevant provisions of paragraph 281 of the Immigration Rules. I therefore allowed the appeal on the basis that the parties are in a subsisting relationship and intend to live permanently with each other as spouses and can meet all the relevant provisions of paragraph 281 of the Immigration Rules in force at the time of the respondent's decision.

### **DECISION**

The determination of the First-tier Tribunal showed errors on points of law such that it should be re-made. I re-make the determination by allowing it on immigration grounds.

### **Anonymity**

The First-tier Tribunal did not make an anonymity order nor do I consider one to be appropriate, it not having been requested.

Signed

Date

Deputy Upper Tribunal Judge Garratt

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

Ms Shaw suggested that a fees order could be made. However I do not make such an order as it is my view that it is only with the additional information now put before me that the respondent would have been obliged to approve the application.

Signed

Date

Deputy Upper Tribunal Judge Garratt