



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

Appeal Number: OA/17839/2013

THE IMMIGRATION ACTS

Heard at Bradford

On 8th January 2015

**Decision & Reasons
Promulgated**

On 19th January 2015

Before

UPPER TRIBUNAL JUDGE D E TAYLOR

Between

**SAIQA AFZAL
(NO ANONYMITY DIRECTION)**

Appellant

and

ENTRY CLEARANCE OFFICER

Respondent

Representation:

For the Appellant: Mr Choudhry

For the Respondent: Mr D Mills, Home Office Presenting Officer

DECISION AND REASONS

1. This is the Appellant's appeal against the decision of Judge Mensah made following a hearing at Bradford on 30th June 2014.

Background

2. The Appellant is a citizen of Pakistan. She applied to join her husband, Ahmed Afzal in the UK but was refused entry clearance on 18th September

2013. The Entry Clearance Officer was not satisfied that the couple were in a subsisting relationship. No other issues were raised.

3. The Appellant appealed against that decision. The judge, in a brief determination, dismissed the appeal on the sole basis that the Appellant had failed to provide material evidence when she applied. She appeared to accept that a child, who had subsequently died, had been born. However she said that the evidence was insufficient because the couple married in 2001 and the application was not made until 2013. She accepted that there may have been previous unsuccessful applications but no evidence had been placed before her. She recorded that the Sponsor had given entirely credible evidence about his time spent with the Appellant in Pakistan and there was now good evidence that the relationship was genuine and subsisting.
4. The Appellant sought permission to appeal, in essence, on the basis that the judge had failed to take into account material evidence before her. She had provided evidence of eight unsuccessful applications for entry clearance between October 2001 and September 2013, together with 40 pages of photographs and telephone statements and evidence of four lengthy visits by the Sponsor to Pakistan.
5. Permission to appeal was granted by Judge Davies on 29th September 2014 on the basis that the judge had not made any reference to the burden and standard of proof.

The Hearing

6. Mr Mills properly recognised that this determination was entirely flawed and could not stand.
7. The judge appears to have been confused between the requirements of points-based applications, where specified evidence is required, and marriage applications where, save for the maintenance requirements, it is not.
8. The only issue before the judge was whether there was evidence before her which demonstrated, on the balance of probabilities, that as at the date of the Entry Clearance Officer's decision, the couple were in a subsisting marriage.
9. It is arguable that, even on the basis of the findings which the judge made, the appeal should have been allowed since she accepted that the Sponsor had given wholly credible evidence before her.
10. Be that as it may, the judge erred in law because she dismissed the appeal on a misconceived basis and failed to take into account material evidence. Her decision is set aside.

Findings and Conclusions

11. Mr Mills provided a determination from 2010 when Immigration Judge Turnock found that the marriage was not subsisting but, as Mr Mills very fairly observed, there has been a considerable body of evidence produced since that date. In any event the judge's conclusions were affected by the fact that the refusal on that occasion was also based on paragraph 320(11) on the basis of an accepted deception in 2006 in relation to maintenance.
12. Having considered the evidence, Mr Mills told me that he was content to concede the issue of a subsisting relationship. He accepted that there was documentary evidence which demonstrated that the relationship was subsisting, namely photographs, telephone records and evidence of four visits since 2011. The Sponsor has significant caring responsibilities for different members of his family which has prevented him visiting Pakistan more frequently, particularly in the earlier years of the marriage. He acknowledged that the Appellant had now made nine visa applications, at a considerable expense, since 2002.
13. On the basis of the concession, with which I wholly concur, I am satisfied that the Appellant has demonstrated to the required standard that this is a subsisting relationship. That being the sole issue, the appeal is allowed.

Decision

14. The original judge erred in law. Her decision is set aside. The Appellant's appeal is allowed.

No anonymity direction is made.

Signed

Date

Upper Tribunal Judge Taylor