



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

Appeal Number: OA/21889/2013

**THE IMMIGRATION ACTS**

Heard at City Tower, Birmingham  
On the 30<sup>th</sup> June 2015

Decision & Reasons Promulgated  
21<sup>st</sup> July 2015

Before:

**UPPER TRIBUNAL JUDGE J PERKINS  
UPPER TRIBUNAL JUDGE C J HANSON  
DEPUTY JUDGE OF THE UPPER TRIBUNAL R F MCGINTY**

Between:

**FARJANA AKHTAR EVA**  
(Anonymity Direction not made)

Appellant

And

**ENTRY CLEARANCE OFFICER-DHAKA**

Respondent

**Representation:**

For the Appellant: Mr A. Khurram (Solicitor - Khurram & Co.)

For the Respondent: Mr N. Smart (Senior Home Office Presenting Officer)

**DECISION AND REASONS**

1. This is the Appellant's appeal against the decision of First-tier Tribunal Judges Andrew and Asjad promulgated on the 13th November 2014.

**Background**

2. The Appellant is a citizen of Bangladesh who was born on the 15th May 1991.
3. On the 21st August 2013, the Appellant had applied for entry clearance as a partner under Appendix FM of the Immigration Rules. On the 21st

September 2014 the Respondent refused the Appellant's application for entry clearance to settle in the United Kingdom with her husband, Mr Md Samad Rasul, under paragraph EC-P.1.1 (d) of Appendix FM of the Immigration Rules, with reference to paragraphs E-ECP.2.6 and 2.10. It was found that the lack of evidence of contact between the Appellant and her sponsor was not consistent with a genuine and subsisting relationship and that the minimal and sporadic nature of the money transfers from her husband to the Appellant were insufficient evidence of a genuine and subsisting relationship. The Respondent was therefore not satisfied that the Appellant's relationship with her husband was genuine and subsisting or that they intended to live together permanently in the United Kingdom.

4. The Appellant appealed to the First-Tier Tribunal (Immigration and Asylum Chamber) and that appeal was heard at Sheldon Court, Birmingham by First-tier Tribunal Judges Andrew and Asjad on the 23rd October 2014. Although they found that the marriage between the Appellant and sponsor was genuine and subsisting, they found that they were not satisfied that the Appellant and sponsor intended to live together permanently in the United Kingdom as husband and wife. They found at paragraph 7 of their decision that whilst the sponsor had appeared before them and indicated how anxious he was for the Appellant to come to the United Kingdom, they said that they had no evidence at all before them from the Appellant telling them what her intentions were and that they had no statement from her telling them why she wanted to leave her own country to come to the United Kingdom and live with the sponsor here. They therefore dismissed the appeal.
5. The Appellant submitted an in time application to the Upper Tribunal against that decision on the 10th December 2014.
6. In the grounds of appeal, it was argued that the First-tier Tribunal Judges erred in law in reaching their decision. It is argued that the only issues in the case were whether or not the marriage was genuine and subsisting and whether the Appellant intended to live permanently with the sponsor in the UK, which was said to form a single rule and that the First-tier Tribunal Judges incorrectly assumed that the two limbs of the single rule were mutually exclusive. It was argued that within the Respondent's bundle there was evidence from the Appellant regarding her intention to permanently live in the UK with the sponsor. It was submitted that in her application for entry clearance the Appellant had applied for entry clearance to settle in the UK as a wife at question 70, which application was said to have been duly signed by her and that at Appendix 2 it was argued that the Appellant had confirmed that she had applied as the spouse of a settled person at question 1.1; that she intended to live with her sponsor permanently at question 1.18 and that she planned to live with her sponsor at 33 [ - ] Street, Walsall at question 2.1. It was further stated that there was a letter dated the 15th May 2014 from the Appellant confirming that her relationship was

genuine and they both wanted to be with each other and live together. It was argued that this evidence was disregarded by the First-tier Tribunal Judges without giving any reasons.

7. First-Tier Tribunal Judge Cruthers granted permission to appeal on the 22nd January 2015, on the basis that it was arguable that it was not reasonably open to the Tribunal to find against the Appellant on the question of her intentions for her marriage after it had found in favour of the Appellant in respect of her marriage being genuine and subsisting, and further that it was arguable that the Tribunal had failed to take account or address material which might have led them to conclude that the Appellant's intentions for the marriage were sufficiently established. It was on this basis that the appeal comes before us.

### Submissions

8. Mr Khurram on behalf of the Appellant accepted that the letter that was said to have been from the Appellant dated the 15th May 2014 was not in fact signed and that in such circumstances no weight could properly have been attached to the same.
9. Mr Khurram asked us to find that there was a material error of law in the determination of First Tier Tribunal Judges Andrew and Asjad's determination decision and asked us to set aside that decision and to re-make the decision allowing the Appellant's appeal.
10. He argued that the First-tier Tribunal Judges had materially erred in law in stating at paragraph 7 of their decision that they had no evidence at all before them regarding the Appellant's intentions, when there was evidence before them from the Appellant in her application for entry clearance where at question 70 she had confirmed that she was applying for entry clearance to settle in the United Kingdom as a wife, and in Appendix 2 where she again had confirmed that she applied as the spouse of a settled person in answer to question 1.1; that she had ticked the box indicating that she intended to live with her sponsor permanently at question 1.18 and had stated that she planned to live with her sponsor at 33 [ - ] Street, Walsall in answer to question 2.1, but he argued that the First-tier Tribunal Judges had completely disregarded that evidence.
11. Mr Smart on behalf of the Respondent relied upon the Respondent's Rule 24 response. Although Mr Smart questioned whether or not the application form had in fact been completed personally by the Appellant and whether it had been actually signed by her, he conceded that the application form was itself evidence, and that questions regarding who completed the application form and as to whether or not the Appellant herself signed it were matters going to the weight of the evidence, rather than the existence of the evidence. Mr Smart further quite properly conceded on behalf of the Respondent that First-tier Tribunal Judges Andrew and Asjad were wrong at paragraph 7 of their

determination to state that they had no evidence at all before them regarding the Appellant's own intentions in respect of the issue to whether or not she intended to live with her husband permanently in the United Kingdom.

### Error of Law

12. Although it was argued within the Grounds of Appeal on behalf of the Appellant that the requirements for the relationship between the Appellant and her partner to be genuine and subsisting formed part of a single rule, together with the requirement that they must intend to live together permanently in the United Kingdom, that argument was not pursued before us by Mr Khurram at the appeal hearing. In any event, we reject any such submission. The requirement under paragraph E-ECP.2.6 of the Immigration Rules HC 395 (as amended) that the relationship between the Appellant and her partner must be genuine and subsisting is completely separate to the requirement at paragraph E-ECP.2.10 that the applicant and partner must intend to live together permanently in the United Kingdom. They do not form part of a single rule and are separate requirements. It therefore does not follow that simply because First-tier Tribunal Judges Andrew and Asjad accepted that the relationship between the Appellant and her husband was genuine and subsisting, that they could not then go on to consider the question as to whether or not the Appellant did genuinely intend to live permanently in the UK with her husband, as a separate requirement.
13. However, given the concession made on behalf of the Respondent by Mr Smart that the First Tier Tribunal Judges were wrong at paragraph 7 of their decision when they found that they had no evidence at all before them from the Appellant telling them what her intentions were regarding whether or not she intended to live together with her husband permanently in the United Kingdom, we accept and find that the decision did include a material error of law. This is not a case where the First-tier Tribunal Judges considered the evidence regarding the Appellant's intentions within the application notice and what was said to be a letter from her dated the 15th May 2014 and found the same to be insufficient, the First-tier Tribunal Judges stated specifically that there was no evidence at all from her in this regard. As Mr Smart properly conceded, questions regarding whether or not the Appellant actually completed the application for entry clearance and accompanying Appendix 2 herself or whether it was completed on her behalf and as to whether or not she did in fact sign the same personally, were questions that would go to the weight of that evidence, but that it was still evidence that should have been considered. Further, he agreed although the letter dated the 15th May 2014 was not signed by the Appellant, and therefore would properly have been given no weight, again, this was not considered by the First Tier Tribunal Judges in reaching their decision.

14. We find that the decision does contain a material error of law when the First-tier Tribunal Judges stated at paragraph 7 that they had no evidence at all before them from the Appellant telling them of her intentions regarding whether or not she intended to live with her husband permanently in the United Kingdom and that the First-tier Tribunal Judges failed to take account of material evidence contained within the application for entry clearance and accompanying Appendix 2, regarding her intention. We accept that the application for entry clearance was on the basis that she had applied for entry clearance to settle in the UK as a wife at question 70 and that further in Appendix 2, she had again indicated that she applied to come as the spouse of a settled person in answer to question 1.1 and had ticked the box indicating that she intended to live with her sponsor permanently in answer to question 1.18 and that she had stated that she planned to live with her sponsor at 53 [ - ] Street, Walsall, in answer to question 2.1 of Appendix 2. This was evidence before the Tribunal, together with the letter of the 15th May 2014, the weight of which should have been assessed by them. Their failure to do so amounts to a material error of law capable of affecting the outcome of the appeal and accordingly we set aside that decision.
15. Having indicated at the appeal hearing that we intended to set aside the decision of First-Tier Tribunal Judges Andrew and Asjad, Mr Khurram on behalf of the Appellant sought permission pursuant to Rule 15 of the Tribunal Procedure (Upper Tribunal) Rules 2008, as amended, to adduce and rely upon a short further affidavit from the Appellant regarding her intention to move to the UK and live with her husband as husband and wife. However, we consider that in the interests of justice, the case should be decided again in to the First Tier Tribunal in order that the Appellant can provide detailed evidence in respect of the remaining issue in the appeal. It may be that the First-tier Tribunal think that the Appellant had not appreciated the importance of proving both that the marriage was subsisting AND that she and her husband intended to live permanently together and will be sympathetic to a Rule 14 application, but that is a matter for the Tribunal to decide if an application is made. We therefore set aside the decision of the First-Tier Tribunal and direct that the case be decided again in the First-tier Tribunal. Clearly, the rehearing must take place before First-Tier Tribunal Judges other than either First-Tier Tribunal Judge Andrew or First-Tier Tribunal Judge Asjad.

#### Notice of Decision

The decision of First-tier Tribunal Judges Andrew and Asjad contained material errors of law and is set aside. The case is to be decided again in the First Tier Tribunal sitting in Birmingham. The case is to be reheard by First-tier Tribunal Judges other than either First-Tier Tribunal Judge Andrew or First-Tier Tribunal Judge Asjad.

The First-Tier Tribunal shall give directions as to what further evidence is to be adduced at the rehearing.

The First-Tier Tribunal did not make an order pursuant to Rule 13 of the Tribunal Procedure (First-Tier Tribunal) (Immigration and Asylum Chamber) Rules 2014 and no application for an anonymity order was made before us.

Signed *Rob McGinty*  
Deputy Upper Tribunal Judge McGinty

Dated 1<sup>st</sup> July 2015