



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

Appeal Number: OA/18390/2013

THE IMMIGRATION ACTS

Heard at Birmingham

**Decision & Reasons
Promulgated**

On 17 March 2016

On 27 April 2016

Before

DEPUTY UPPER TRIBUNAL JUDGE NORTON-TAYLOR

Between

**MOHAMMED SHANDAR MIAH
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

ENTRY CLEARANCE OFFICER, DHAKA

Respondent

Representation:

For the Appellant: Mr M K Hasan, Solicitor from Kalam Solicitors

For the Respondent: Mr I Richards, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge Camp (the judge), promulgated on 11 September 2014, in which he dismissed the Appellant's appeal against the Respondent's decision of 21 August 2013. That decision had refused the Appellant entry clearance as the partner of a person settled in the United Kingdom under Appendix FM to the Immigration Rules.

2. As is clear from the dates of decision and promulgation, above, this case has been the victim of significant delays, none of them the fault of the Appellant.
3. The 2013 refusal of entry clearance was based upon relationship and maintenance issues. In respect of the latter, it was said that if the Appellant appealed the decision a “final” decision on funds “may” be made at a later stage. In fact, the Appellant did appeal the first decision, and a further decision was made on 4 August 2014. The refusal notice expressly states that the second decision was not in fact a “new” decision and so there were no further appeal rights.

The judge’s decision

4. The judge concluded that the Respondent’s approach to the 2014 decision was not in accordance with the law. It appears as though this element of his decision relates solely to the maintenance issue. In light of this conclusion the judge did not consider the Appellant’s evidence and submissions on the maintenance issue.
5. In respect of the relationship issue the judge accepted that the Appellant and his wife (the sponsor) had married forty-five years ago, and that they had three children together. However, notwithstanding this the judge goes on to state that there was a “dearth” of evidence about recent contact between the couple. On this basis, he found that the relationship was not a genuine and subsisting one. The appeal was purportedly allowed to a limited extent on the maintenance issue, and dismissed on the relationship issue.

The grounds of appeal and grant of permission

6. The concise grounds assert that the judge erred in failing to determine the merits of the maintenance issue, and erred in his finding on the relationship issue.
7. Permission to appeal was granted by Upper Tribunal Judge McWilliam on 7 May 2015.

My decision on error of law

8. To Mr Richard’s credit, he did not put up any resistance to the Appellant’s attack on the judge’s decision. In my view this was an entirely sensible position to have adopted.
9. There are clear material errors of law in this case.

10. First, the judge could and should have determined the merits of the maintenance issue. The Respondent's 2013 decision raised the maintenance issue. The Appellant attended the appeal prepared to argue the matter, with evidence in support. There is no sound reason provided by the judge as to why he was unable to deal with a live issue in the appeal.
11. Second, the judge's consideration of the relationship issue is flawed. Quite apart from what one might consider was the persuasive (and undisputed) fact of a forty-five year marriage and three children, it was simply not open to the judge to conclude that there was a "dearth" of evidence relating to contact between the Appellant and his wife. I was directed to pages 64 onwards of the Appellant's bundle (before the judge) in which there are reams of telephone bills indicating regular contact between the couple (Q26 of the visa application form shows that the numbers match up). This evidence was pre and post-decision. It was relevant and material. The judge erred in failing to have any regard to it.
12. I set aside the decision of the First-tier Tribunal.

Remaking the decision

13. Both representatives were agreed that I could remake the decision on the evidence before me. This I now do.
14. There is ample evidence to show that the Appellant and his wife of forty-five years had a perfectly genuine and subsisting relationship as at the date of decision and beyond. The telephone bills are all a reliable source of contact between the couple. In addition, I find that both the Appellant and his wife are credible in their own evidence.
15. Mr Richards did not seek to challenge any of the evidence on this issue.
16. Turning to the maintenance issue, Mr Hasan helpfully took me through the evidence submitted back in 2013 and all relating to the date of decision.
17. Mr Richards expressly stated that he was not challenging any of the evidence. I find it all to be reliable and relevant.
18. Pages 15 and 19 of the Appellant's bundle show proof of payments during 2012 to 2013. Pages 21 to 22 show National Insurance Class 2 contributions. Pages 25 to 26 are the accountant's letter. Pages 27 to 33 are the tax calculations. Pages 36 to 57 contain the bank statements for twelve months. Pages 58 to 61 corroborate all earnings. Page 15 contained the SA300 required by paragraph 7(ii) of Appendix FM-SE. Other references cited to me provided further support, both in terms of specified evidence and more generally.

19. In light of the foregoing, I am entirely satisfied that the Appellant met the requirements of Appendix FM as regards both the relationship and maintenance issues, having regards to the fact that the burden rests with him and that specified evidence was demanded by Appendix FM-SE.
20. The Appellant's appeal therefore succeeds under the Immigration Rules.

Anonymity

21. There is no need for a direction in this case.

Decision

The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.

I set aside the decision of the First-tier Tribunal.

I re-make the decision by allowing the appeal under the Immigration Rules.

Signed

Date: 25 April 2016

H B Norton-Taylor

Deputy Judge of the Upper Tribunal

TO THE RESPONDENT
FEE AWARD

As I have allowed the appeal and because a fee has been paid or is payable, I have considered making a fee award and have decided to make a full fee award. The appeal has succeeded on evidence provided to the Respondent either with the initial application or with the notice of appeal. None of it has been challenged before me.

Signed

Date: 25 April 2016

Judge H B Norton-Taylor

Deputy Judge of the Upper Tribunal