



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

Appeal Number: HU/01013/2016

THE IMMIGRATION ACTS

**Heard at Field House
On 27 April 2018**

**Decision & Reasons Promulgated
On 10 May 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE HILL QC

Between

ENTRY CLEARANCE OFFICER - NEW DELHI

Appellant

and

**UMMAY MORIWAM TANGINA
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: Mr L Tarlow, Home Office Presenting Officer

For the Respondent: Mr R Spurling, Counsel instructed by City Heights Solicitors

DECISION AND REASONS

1. This is an appeal from the decision of First-tier Tribunal Judge Majid promulgated as long ago as 21 August 2017. The grounds of appeal were settled on the Entry Clearance Officer's behalf by Mr Tarlow who appears before me today.
2. Those grounds outline the extent to which Judge Majid failed to engage with the judicial function of making findings of fact on the matters in dispute. The issues which called for consideration were (i) whether the relationship between the applicant and her spouse was

genuine and subsisting (E-ECP.2.6) and (ii) whether the applicant and partner intended to live together permanently in the United Kingdom (E-ECP.2.10).

3. I gave a provisional indication relying on the conjoined appeals in **MM v SSHD and others (AA/06906/2014)** (as yet unreported) in which the Upper Tribunal (Vice-President Ockleton, Judge O'Connor and Judge Smith) had occasion to look at several decisions, all deriving from Judge Majid, which were formulaic and lacking in judicial acumen. Many of the *pro forma* paragraphs criticised in the decisions under consideration in the conjoined appeals have been replicated in this case.
4. Mr Spurling, who appears for the respondent, properly and readily conceded that this decision is so fundamentally flawed that it cannot be sustained and must be set aside. I do not think it would assist anyone for me to enumerate each and all of the multiple deficiencies. Two examples will suffice. At paragraph 18 the judge says:

“I found the evidence adduced on the Appellant’s behalf credible and I am able to help her given her particular situation and what I have said in this Decision. I am aware that it is a traditional marriage arranged by elders and there is good evidence for member to allow her appeal.”

And at paragraph 25:-

“I am able to change the decision of the Respondent in this case and allow this appeal.” (emphasis added in each instance)

5. Both these extracts deploy language of the type that was deprecated by the Upper Tribunal in the conjoined appeal decision. It is not the function of a judge “to help” those he perceives as deserving litigants or “to change decisions” of the Secretary of State, although a proper exercise of the judicial function may have the effect of doing either or both. A judge is required to apply the law to the facts as he finds them. If there are any findings of fact in this decision, they are extremely difficult to discern. And, in any event, there is no meaningful attempt to identify, still less apply, the relevant law.
6. It is inevitable, as both representatives concede, that the matter should be set aside and remitted to the First-tier Tribunal to be determined afresh.
7. I appreciate that remitting the appeal will have a significant effect on Miss Tangina, not merely by re-opening the matter, but also by adding to her legal costs. This is very regrettable. The fault is not that of the Entry Clearance Officer but lies entirely in the abrogation of judicial responsibility by the particular judge who heard the matter. It would not be right to remake decision today in the Upper Tribunal because the First-tier Tribunal decision is not simply wrong, but irredeemably flawed *in limine*. However, I would wish my words of

