



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: HU/06203/2016

THE IMMIGRATION ACTS

Heard at Bradford  
On 15 May 2018

Decision & Reasons Promulgated  
On 22 May 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE SAFFER

Between

ENTRY CLEARANCE OFFICER

Appellant

and

MARIA KOUSAR  
(NO ANONYMITY ORDER MADE)

Respondent

Representation:

For the Appellant: Mr Diwnycz a Home Office Presenting Officer  
For the Respondent: Mr O’Ryan of Counsel

DECISION AND REASONS

1. For the purpose of continuity with the determination in the First-tier Tribunal I will hereinafter refer to the Entry Clearance Officer as the Respondent and Mrs Kousar as the Appellant.

Background

2. The Respondent refused the Appellant’s application for leave to enter as a spouse on 22 January 2016. The appeal against this was allowed by First-tier Tribunal Judge Drake (“the Judge”) following a hearing on 11 August 2017.
3. In summary the Judge found that;
  - (1) there was a genuine and subsisting relationship with her Sponsor [18],
  - (2) her Sponsor provided daily care for his uncle for which he receives Carers Allowance [17],

- (3) her Sponsor is assimilated here [17],
  - (4) it would not be reasonable to expect her Sponsor to return to Pakistan [17],  
and
  - (5) there were insurmountable obstacles to family life continuing in Pakistan [19].
4. Mr Diwyncz relied on the application which notes that;
    - (1) the Judge referred to “paragraph (v) of the Rule 273 ADE (1)” which presumably meant “Rule 276 ADE (1),
    - (2) the Judge only had human rights grounds open to him but also allowed it under the rules,
    - (3) the Judge gave inadequate findings regarding the financial criteria and the nature of the relationship, and
    - (4) there is no proper s117 analysis within the article 8 assessment.
  5. Mr Diwyncz could not point me to any factual error with the decision, with the exception of the wrong Immigration Rule being identified.
  6. Judge Pedro granted permission to appeal (5 February 2018) on the basis that the judgement is confusing, there were inadequate findings, the Judge misdirected himself, and the appeal was allowed on a basis not open to the Judge.
  7. Within the rule 24 notice (10 May 2018) the evidence of multiple visits and electronic communications that was contained within the Appellant’s bundle that was before the Judge was highlighted, as was the uncontested oral evidence. It was noted that the financial requirement was one of adequacy and not the £18,600 threshold, due to the receipt of Carers Allowance. The relevant calculations were provided and the skeleton argument that was before the Judge at the hearing was noted. As the financial consideration within the Immigration Rules was met, Ruppiah v SSHD [2016] EWCA Civ 803 did not assist the Respondent. There were no considerations that countered the “weighty” factor that the requirements of the Immigration Rules were met as it had already been accepted by the Respondent that the Appellant spoke English and there was no suggestion of deception.

## Discussion

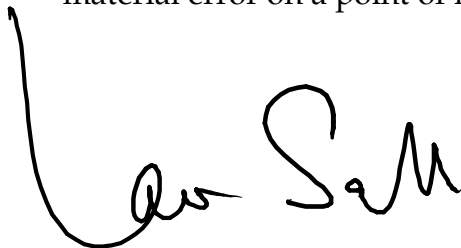
8. The Judge was concerned with whether the requirements of the Immigration Rules were met, and, if so, whether there were weighty considerations that counterbalanced against that such as to mean that the proportionality balance fell against the Appellant. The Judge was of course only required to determine issues in dispute, and does not have to recite every piece of evidence received.
9. It is not a material error of law to make a typographical error in relation to a rule number where the terms of the rule are correctly applied.
10. The Judge purported to allow the appeal under the Immigration Rules. He had no power to do so. It is clear however that he was satisfied that the requirements of the Immigration Rules were met which is the first question he was required to

address. In those circumstances, purporting to allow it on a basis where there was no statutory power where he (as he was entitled to) allowed it on a basis where he did have a statutory power, is not a material error of law as it made no difference to the outcome.

11. The Judge noted the nature of the couple's relationship and the Sponsor's employment and work as a carer [10]. The factual accuracy of that recitation has not been challenged. The Judge was entitled to find that, on the basis of the evidence provided and the submissions made (which he did not have to slavishly repeat), the financial criteria and genuine and subsisting nature of the relationship had been made out [18] - indeed one only has to look at the evidence submitted that there is no realistic prospect that a different Judge would make a different decision. In those circumstances, he made no material error of law in his assessment of whether the criteria within the Immigration Rules were met.
12. The Judge then went on to consider article 8 and in particular s117 of the Nationality, Immigration and Asylum Act 2002 [24]. The Judge noted the economic position. He was entitled not to mention the English language criteria as that was not in dispute (see above [7]). He noted why the Sponsor did not want to live in Pakistan [11]. He was entitled to find that it would be would not be reasonable to expect him to return to Pakistan [17], and there were insurmountable obstacles to family life continuing in Pakistan [19]. In those circumstances, he made no material error of law in his article 8 assessment.
13. The fact that a different Judge may have provided greater clarity, and made more detailed findings, does not render the decision defective where the core issues were adequately dealt with, and where no realistic possibility existed of a different decision being made. It is also unhelpful for the Judge to appear to have used a template that included reference to s55 of the Borders, Citizen and Immigration Act 2009 where there were no children involved.

Decision:

The making of the decision of the First-tier Tribunal did not involve the making of a material error on a point of law.



Signed:  
Deputy Upper Tribunal Judge Saffer  
16 May 2018