



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/22741/2016

THE IMMIGRATION ACTS

Heard at Birmingham
On 14th May 2018

Decision & Reasons Promulgated
On 11th June 2018

Before

UPPER TRIBUNAL JUDGE REEDS

Between

DK
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M. Afzal, instructed on behalf of the Appellant
For the Respondent: Ms H. Aboni, Senior Presenting Officer

DECISION AND REASONS

1. The Appellant is a citizen of India.
2. **Rule 14: The Tribunal Procedure (Upper Tribunal) Rules 2008** Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies both to the Appellant and to the Respondent.
3. The Appellant, with permission, appeals against the decision of the First-tier Tribunal, who, in a determination promulgated on the 22nd September 2017,

dismissed his appeal against the decision of the Respondent made on the 14th September 2016 to refuse entry clearance.

4. Permission to appeal was granted by First-tier Tribunal Judge Parker on the 21st December 2017.
5. The background to the appeal is set out in the decision letter and the determination at paragraphs 7 onwards. It can be summarised as follows. The Appellant entered the United Kingdom without leave on 1 October 2008 and used a different identity whilst in the United Kingdom and received NHS treatment.
6. In or about February 2014 the Appellant and the sponsor met and began a relationship in July of that year. The sponsor, who is a British Citizen, has four children aged between 9 and 17. In October 2015 the Appellant proposed marriage to the sponsor.
7. The parties lived together from 18 January 2016 until 29 February 2016. On 29 February 2016 the Appellant voluntarily returned to India at his own expense to apply for entry clearance. On 2 April 2016 the sponsor made first trip to India and it was on that occasion that the parties married.
8. The Appellant made an application for entry clearance as a spouse on the 3rd August 2016. A decision was made on that application by the Entry Clearance Officer on the 14th September 2016 who refused the application. When considering the suitability requirements, the ECO took into account that in 2013 he was cautioned for possessing a class B drug. It was also stated that in 2008 he came to the notice of the police possessing a class A drug and on 1 January 2013 and in December 2015 he came to the notice of the police for overstaying and that he gave a false name to the police. The ECO applied paragraph 320 (11) of the Immigration Rules, and that an entry clearance application should normally be refused where the applicant had previously contrived in a significant way to frustrate the intentions of the Rules. The ECO was satisfied that paragraph 320(11) was applicable because the applicant and enter the United Kingdom in 2008 without leave and did not seek to regularise his stay. He admitted to working illegally and records identified that he had used another identity whilst in the United Kingdom. He had remained illegally in the UK for eight years. The ECO took into account that he stated that his wife had helped him see the errors of his ways but noted that he was over the age of 18 when he took these actions and thus could reasonably be held responsible for his own behaviour. His assertion of intention to change had not mitigated his behaviour when in the UK. Thus the ECO was satisfied that he had previously contrived in a significant way to frustrate the intentions of the Rules and refused the application under paragraph 320(11).
9. In addition, it was refused under paragraph EC-1.1 (c) of Appendix FM of the Immigration Rules because he received NHS treatment at hospital whilst in the UK and the cost was £4819 and despite being highlighted in the previous refusal, the debt still remained outstanding. Thus the ECO was satisfied that he failed to pay

charges in accordance with the relevant NHS regulations and charges to overseas visitors.

10. The applications also refused under the relationship requirements. It was noted that he was not named as a tenant on the rental agreement nor any utility bills or document naming as a resident of the same address. The council tax showed a single person discount. The ECO was not satisfied that the relationship with sponsor was genuine and subsisting or that they intended to live permanently together in the UK. As to the financial requirements, the ECO was not satisfied that he and the sponsor were able to maintain and accommodate himself and any dependents adequately the UK without caused public funds. The ECO was also not satisfied that he could meet the Rules relating to the English language requirement.
11. The Appellant sought permission to appeal and the appeal came before the First-tier Tribunal on the 13th September 2017. In a determination promulgated on 22nd September 2017 the Judge dismissed the appeal under the Immigration Rules and on human rights grounds (Article 8).
12. The findings of fact made by the judge can be summarised as follows:
 - (1) The English language requirement. The judge found that he had passed his English language test on 19 May 2016 which confirmed a pass result. The judge was therefore satisfied that he met the English language requirement (see paragraphs 13-14).
 - (2) The judge was satisfied that the sponsor met the financial requirements for the reasons given at paragraphs 15-16 and no issue had been raised in relation to the issue of accommodation.
 - (3) As to the NHS treatment, the judge found that at the time of the application that was still an outstanding charge and therefore applying paragraph 320 (11), the judge found that the entry clearance officer had a discretion to refuse entry clearance on the basis of the outstanding NHS debt. However the judge was satisfied that the debt had been paid on 1 September 2017.
 - (4) The judge found that the parties were in a genuine and subsisting relationship, the judge found that there was "substantial evidence that they were in a relationship together (paragraph 21); that the sponsor had visited the Appellant six times in India since he left in 2016 and that there were "numerous contact logs, photographs and letters of support to confirm the relationship." The judge found that "there was overwhelming evidence that they were in a genuine relationship. Their efforts in applying for entry clearance with substantial documentation and the continuing subsistence of their relationship confirms that they intend to live together permanently in the UK".

- (5) The judge found that they were married but that they had lived together for a short period of time.
- (6) At paragraph 28 the judge stated that he was satisfied that they were in a committed relationship and that they intended to live together permanently.
- (7) Paragraph 320 (11): the judge reminded himself that it was a discretionary ground of refusal and applied a three stage approach to this issue (see paragraph 23-25). The judge noted that the ECO did not specifically refer to consideration of discretion and the balancing of any features such as family life or for the Appellant's voluntary return to India. However the judge accepted that paragraph 320 (11) was satisfied and that the Appellant had an outstanding NHS debt. The judge concluded "taken together, there were compelling circumstances to refuse the Appellant entry clearance. I am unable to conclude that the Appellant met the Immigration Rules."
- (8) The judge considered Article 8 outside of the Rules. As set out above he was satisfied that the parties were in a committed and genuine relationship (paragraph 28).
- (9) In relation to the children, the judge was satisfied that the children had formed a bond with the Appellant (see paragraph 28).
- (10) In respect of the S117 public interest factors, the judge took into account that the maintenance of firm immigration control is in the public interest. He found that the Appellant spoke English to the standard required for entry clearance and because he was not able to work legally could not be regarded as financially independent which therefore enhanced the public interest.
- (11) As to his immigration history, the judge took into account that he entered the UK illegally in 2008 without valid leave and that he had established a family and private life when he had no leave to be in the UK (S.117B (4) (b)). He remained in the UK in breach of the Immigration Rules. The judge found that his conduct had been poor in either not leaving or making attempts to regularise his stay. He came to the attention of the police for possession of drugs and had used a false identity. The Appellant then began a relationship knowing he had no right to be in the UK or any legitimate expectation that he would be allowed to remain (see paragraph 30 - 33).
- (12) However on the positive side, his conduct had improved, he had made every effort to make things right and had been supported his partner and built a close relationship with her children. There is little to suggest that the Appellant did not comply with his bail and he left

the UK in an attempt to behave correctly. The NHS surcharge had been paid see paragraphs 34 – 35).

- (13) S117B(6): the judge found that the children were all British citizens and were therefore “qualifying children” but that whilst the judge was satisfied that he had a relationship with the children, he was not satisfied that the extent that relationship was a “parental relationship” because the sponsor confirmed that they had lived together only for a short period of time (paragraph 30), that the Appellant was introduced to the children a few months after July 2014 and only spent a short period living in the family household January 2016 (paragraph 36). There was little evidence to confirm the Appellant’s role in their life-the judge did not know if the Appellant went to parents evening, whether he attended meetings of the school and provided support. The judge found that there was “insufficient for me to conclude that he has a parental relationship with them albeit he has a loving relationship with them” (see paragraph 44).
- (14) As to their best interests, the judge found that they had always lived with their mother and it was in their best interests they stayed with their mother in the UK. They had lived in the UK throughout their life and were likely to know little about Indian culture. They had extended family nearby, the eldest son is almost at majority and the younger son receives additional help his disability (see paragraph 35 and 36). The judge accepted that his relationship with the children was genuine and that he had seen “very moving letters from the children who express their love of the Appellant. It is clear that the Appellant is loved by the sponsor’s family and makes a positive contribution.” (See paragraph 38).
- (15) In relation to the sponsor, it found that the relationship was genuine and that notwithstanding the challenges that she faced which was set out at paragraph 37; she had visited the Appellant a number of times to confirm her support for him and his application for entry clearance. (See paragraph 37). At paragraph 40, he found the sponsor’s life and that of the children were improved by the Appellant’s presence “the family love each other very much”. At paragraph 43, the judge made reference to the sponsor and that the Appellant “has been a pillar of support for her.”
- (16) Having taken into account those factors, the judge found that the decision of the Respondent to refuse entry clearance was proportionate in all the circumstances.

13. Thus the appeal came before the Upper Tribunal. Mr Afzal relied upon the written grounds. He submitted that the judge erred in law having made inconsistent findings as to the nature of the relationship between the children and the Appellant. At paragraph 28 he accepted the children had formed a bond with the sponsor’s

children and at paragraph 34 that he had built a “close relationship with the children” and that he had made a positive contribution to their lives. However it reaching a conclusion on whether there was a parental relationship, the judge had failed to give weight to the oral evidence of the sponsor as to the nature of the relationship which was set out at paragraph 6 of the sponsor’s witness statement. This referred to the Appellant staying over 2 to 3 nights a week and having a good relationship with the children. It was submitted that judge failed to attach appropriate weight to the oral evidence given by the Appellant.

14. Furthermore, the judge failed to consider the supporting statements of the children who were aged 17, 14, 9 and 8 as at the date of the hearing when considering the children’s best interests. The judge’s finding that the Appellant had a close relationship with the children was inconsistent with his finding at paragraph 44 whereby the judge found there was insufficient evidence to show that he had a parental relationship with them.
15. Mr Afzal directed the Tribunal to paragraph 43 and the circumstances of the sponsor. He submitted that she had had a difficult time for the reasons set out in that paragraph but that it was the Appellant’s active role in the relationship which had improved the life of the sponsor and her children (as set out by the judge at paragraph 40). The Appellant’s wife had given evidence about how she and the children felt and the impact of the separation. This was evidenced to page 101 in one of the letters from the children and page 103.
16. He further submitted that the judge did not properly consider Article 8 and did not consider whether there were any “insurmountable obstacles” to family life continuing in India.
17. He also relied upon the “Robinson obvious” point raised by Judge Parker that the judge arguably misinterpreted paragraph 320 (11) by refusing to exercise his own discretion.
18. Ms Aboni on behalf of the Secretary of State relied upon the Rule 24 response issued on 30 January 2018. Though she submitted that the judge directed himself appropriately and gave adequate reasons for findings of fact which are open to him on the evidence. In oral submissions she submitted that the judge did consider whether the Appellant could meet the Immigration Rules and properly considered paragraph 320 (11). The judge found that as paragraph 320 (11) was satisfied, the Appellant could not meet the Immigration Rules.
19. She submitted that whilst the judge made a positive finding in respect of the relationship between the Appellant and the sponsor and thereby family life (paragraph 28) he gave adequate reasons for reaching the conclusion that there was insufficient evidence to demonstrate that he enjoyed a “parental relationship” with the children. He accepted that they were involved in the lives of the children but not that they had a “parental relationship”. Paragraph 38 the judge did consider the letters from the children but paragraph 39 it was owing to the judge to find there was little to confirm how he had supported the child’s disability.

20. She further submitted that it was open to the judge to find that it was not disproportionate to refuse entry clearance. He took into account the evidence of cohabitation that they had only lived together as a family unit from 18 January until he left the United Kingdom in February and the judge was entitled to take into account against the Appellant the public interest factors identified under section 117B which included his very poor Immigration history, that the relationship with the sponsor could carry little weight for the reasons given at paragraph 42. Thus she submitted the judge had given adequate consideration to all the circumstances thus there was no material error of law.
21. At the conclusion of the submissions I reserved my decision which I now give.
22. It is plain from reading the determination that the Appellant had met the substantive parts of the Immigration Rules by reference to the issues set out in the decision letter. The judge found that he could meet the English language requirement, that there was a genuine subsisting relationship between the parties based on the "overwhelming evidence" provided and also found that the Appellant could meet the accommodation and maintenance requirements. The Respondent however had refused the application under paragraph 320(11) on the basis that an application entry clearance should normally be refused "where the applicant has previously contrived in a significant way to frustrate the intentions of the Rules". The decision letter made reference to the factors taken into account which related to his poor Immigration history, his failure to regularise his stay, his illegal working and the use of a false identity.
23. The judge set out his considerations of this issue at paragraph 22 - 27. The judge properly identified that this was not a mandatory refusal at paragraph 22 and that the aggravating circumstances referred to in the rule were "not exhaustive" as set out in the extract of the guidance recorded at paragraph 24. However whilst he found that the ECO failed to consider the counterbalancing factors; in this case identified by the judge as the family life between the couple which the judge had found demonstrated by "overwhelming evidence", the six visits made by the sponsor to India and that the Appellant had voluntarily returned to India, the judge appeared to find that the issue of the outstanding debt was a complete answer to paragraph 320(11) (see paragraph 26) and that there were compelling circumstances to refuse entry clearance based on the refusal letter. I consider that the judge fell into error at paragraph 27 and that even in the absence of a "not in accordance with the law" ground of appeal it would have been for the judge to carry out the requisite balance under paragraph 320(11) taking into account the positive findings of fact which the ECO had not considered or had placed in the balance.
24. The only ground upon which the appeal could be brought to the First-tier Tribunal was that the decision to refuse the Appellant entry clearance was unlawful under Section 6 of the Human Rights Act 1998 that is, it was contrary to Article 8 of the ECHR. The issue for the judge to decide was not only to decide whether the Immigration Rules had been satisfied (although this is a matter of weight in determining the proportionality of denying any entry clearance) but whether refusing entry clearance would be contrary to Article 8 of the ECHR. The

Immigration Rules reflect the Secretary of State's (and the ECO's) view as to where the public interest lies in the proportionality assessment under Article 8. A failure to lawfully assess whether the requirements of the Rules are met clearly impinges on the assessment of where the public interest lies in the overarching proportionality assessment required under Article 8.

25. The second issue relates to whether the judge properly considered the nature of the Appellant's relationship with the relevant children. There is no dispute that he is not the biological father of the children but that they are "children of the family" given that the parties are married.
26. The judge made no reference to the relevant guidance or the caselaw relevant to the issue of whether there is a parental relationship on the particular facts.
27. The relevant guidance in her IDI deals with what constitutes a "genuine and subsisting parental relationship" for the purposes of Appendix FM of the Immigration Rules, in particular para EX.1 in respect of leave sought as a "partner" or "parent." No reliance is placed upon those Rules in this case, however, the guidance itself deals with the very same requirements in s.117B(6).
28. In para 11.2.1, the IDI provides as follows:
 "11.2.1 Is there a genuine and subsisting parental relationship? Where the application is being considered under paragraph EX.1.(a) in respect of the 10-year partner or parent routes, the decision maker must decide whether the applicant has a 'genuine and subsisting parental relationship' with the child. This will be particularly relevant to cases where the child is the child of the applicant's partner, or where the parent is not living with the child. The phrase goes beyond the strict legal definition of parent, reflected in the definition of 'parent' in paragraph 6 of the Immigration Rules, to encompass situations in which the applicant is playing a genuinely parental role in a child's life whether that is recognised as a matter of law or not. This means that an applicant living with a child of their partner and taking a step-parent role in the child's life could have a 'genuine and subsisting parental relationship' with them, even if they had not formally adopted the child, but only if the other biological parent played no part in the child's life, or there was extremely limited contact between the child and the other biological parent. But in a case where the other biological parent continued to maintain a close relationship with the child, even if they were not living with them, a new partner of the other biological parent could not normally have a role equating to a 'genuine and subsisting parental relationship' with them, even if they had not formally adopted the child, but only if the other biological parent played no part in the child's life, or there was extremely limited contact between the child and the other biological parent. But in a case where the other biological parent continued to maintain a close relationship with the child, even if they were not living with them, a new partner of the other biological parent could not normally have a role equating to 'a genuine and subsisting parental relationship' with the child. In considering whether the applicant has a 'genuine and subsisting parental relationship' the following factors are likely to be relevant:

Does the applicant have a parental relationship with the child? what is the relationship - biological, adopted, step child, legal guardian? Are they the child's de facto primary carer? is the applicant willing and able to look after the child? are they physically able to care for the child? Unless there were very exceptional circumstances, we would generally expect that only two people could be in a parental relationship with the child. Is it a genuine and subsisting relationship? does the child live with the person? where does the applicant live in relation to the child? how regularly do they see one another? are there any relevant court orders governing access to the child? is there any evidence provided within the application as to the views of the child, other family members or social work or other relevant professionals? to what extent is the applicant making an active contribution to the child's life? Factors which might prompt closer scrutiny include: the person has little or no contact with the child or contact is irregular; any contact is only recent in nature; support is only financial in nature; there is no contact or emotional support; and/or the child is largely independent of the person. Other people who spend time with, or reside with the child in addition to their parents, such as their grandparent, aunt or uncle or other family member, or a close friend of the family, would not generally be considered to have a parental relationship with the child for the purposes of this guidance."

29. Para 6 of the Immigration Rules has no direct application to Part 5A of the NIA Act 2002. Secondly, it defines a "parent" rather than what amounts to a "parental relationship." (see decision R (on the application of RK) v Secretary of State for the Home Department (s.117B(6); "parental relationship") IJR [2016] UKUT 00031 (IAC)

30. That case gave further guidance at paragraphs 41 and 42 as follows:

"41. I was also referred to the relevant guidance for Appendix FM in the Respondent's IDI. That is no more than guidance in relation to the Rules and it cannot have any definitive role to play when interpreting s.117B(6). It is, nevertheless, a helpful document which, as I have already indicated, was relied upon by both parties to support their cases. It is recognised in the IDI that more than 2 persons may be in a "parental relationship" with a child. That, I apprehend, is not contentious. What is contentious is when and whether it is the case in the circumstances of this claim.

42. Whether a person is in a "parental relationship" with a child must, necessarily, depend on the individual circumstances. Those circumstances will include what role they actually play in caring for and making decisions in relation to the child. That is likely to be a most significant factor. However, it will also include whether that relationship arises because of their legal obligations as a parent or in lieu of a parent under a court order or other legal obligation. I accept that it is not necessary for an individual to have "parental responsibility" in law for there to exist a "parental relationship," although whether or not that is the case will be a relevant factor. What

is important is that the individual can establish that they have taken on the role that a "parent" usually plays in the life of their child."

31. There is no doubt that the judge found that the relationship between the children and the Appellant to be a genuine one and made express findings to that effect at paragraph 38. Contrary to the grounds, the judge did take into account the letters sent by the children and exhibited in the bundle at paragraph 38 of his decision. The judge described the letters as "moving letters from the children who express their love for the Appellant." The judge also found that the Appellant had a close relationship with the children and that he had formed a bond with them (see paragraph 28) and had made a positive contribution to the family life not for the children but also to the sponsor's life (see paragraph 38) and that the children had "strong ties" to the Appellant (see paragraph 39). The judge found that notwithstanding that, there was little evidence to confirm the Appellant's role in the life, for example, whether the Appellant went to parents evenings or attend meetings in relation to L's disability. Mr Afzal points to paragraph 2 of the sponsors witness statement which sets out the nature of the support given to the children and expressly stated that he would attend parents evening (see paragraph 2). Furthermore, whilst it was open to the judge to take into account what was described as a short length of cohabitation (between January and February 2016) this arguably fails to take into account the earlier period of time when the evidence of the sponsor described him as visiting regularly and also staying in the family home for 2 to 3 nights per week (see paragraph 6). I am also told that there was further oral evidence given by the sponsor as to details of the nature of family life (see grounds).
32. A further issue arises in respect of the child L and his disability. Whilst judge found that the Appellant formed a close relationship with all of the children, the judge failed to consider how that relationship had been formed if it was not "parental" in nature. In respect of L, the evidence before the judge was that as a result of his disability he had particular needs which the Appellant had assisted with (see paragraph 2 of the sponsor's statement). The judge also did not give any weight to the lack of parental role in relation to the children's biological father. Consequently I am satisfied that the assessment of whether there was a "parental relationship" did not take into account relevant factors.
33. The last issue relates to that of "insurmountable obstacles" to family life in India.
34. The Supreme Court considered insurmountable obstacles and Article 8 in the decision of R(Agyarko) v Secretary of State for the Home Department [2017] UKSC 11. Mrs Agyarko had made her way to the Supreme Court by way of a failed appeal in the Court of Appeal against a decision of the Upper Tribunal to refuse to grant permission for judicial review. She had argued that in refusing permission the Tribunal had failed to recognise that the Secretary of State had imposed too high a threshold in respect of paragraph EX.1 of the Rules, and had failed to take relevant facts into account. This argument was rejected by both Court of Appeal and the Supreme Court, who held that the Secretary of State had applied the correct legal framework. For the purpose of this appeal, they also held that on the facts presented,

neither Mrs Agyarko nor her co-Appellant Mrs Ikuga could possibly have established that there were insurmountable obstacles to their family life continuing abroad.

35. Mrs Agyarko was a long-term overstayer of Ghanaian nationality. She had married a British citizen; they had no children. She however, had three children of her own (now adults), a sister and a mother living in Ghana. Her partner was British and had lived all his life in the UK. He was in employment here. The Secretary of State had accepted that there would be a degree of hardship for her husband going to live in Ghana (a country with which he had no connection) but that this did not meet the test in the rule. Mrs Ikuga was a Nigerian, also an overstayer. Her British husband was of Nigerian origin. She placed particular reliance upon the assertion that she was receiving medical treatment, including for infertility, in the UK which would have been disrupted if she were to leave. The Secretary of State had cast some doubt on whether she was actually living with her husband and found that the claimed medical problems were not in fact as serious as the application had indicated.
36. In neither case were there any children involved which is the distinguishing feature here from the instant appeal.
37. At paragraph 43 the court considered the European jurisprudence and that the "words "insurmountable obstacles" to be understood in a practical and realistic sense, rather than as referring solely to obstacles which make it literally impossible for the family to live together in the country of origin of the non-national concerned".
38. However the Court went on to state: "Insurmountable obstacles" is, however, the expression employed by the Grand Chamber; and the court's application of it indicates that it is a stringent test. In *Jeunesse*, for example, there were said to be no insurmountable obstacles to the relocation of the family to Suriname, although the children, the eldest of whom was at secondary school, were Dutch nationals who had lived there all their lives, had never visited Suriname, and would experience a degree of hardship if forced to move, and the applicant's partner was in full-time employment in the Netherlands: see paras 117 and 119".
39. Thus the Court found that the requirement of insurmountable obstacles is a stringent test to be met and this was not incompatible with Article 8.
40. The Court also found that the requirement must be interpreted in a sensible and practical way and the definition in EX.2 was approved at paragraph [44] as follows: "The expression "insurmountable obstacles" is now defined by paragraph EX.2 as meaning "very significant difficulties which would be faced by the applicant or their partner in continuing their family life together outside the UK and which could not be overcome or would entail very serious hardship for the applicant or their partner." That definition appears to me to be consistent with the meaning which can be derived from the Strasbourg case law. As explained in para 16 above, paragraph EX.2 was not introduced until after the dates of the decisions in the present cases. Prior to the insertion of that definition, it would nevertheless be reasonable to infer,

consistently with the Secretary of State's statutory duty to act compatibly with Convention rights, that the expression was intended to bear the same meaning in the Rules as in the Strasbourg case law from which it was derived. I would therefore interpret it as bearing the same meaning as is now set out in paragraph EX.2."

41. In conclusion the Court held at [45] "By virtue of paragraph EX.1(b), "insurmountable obstacles" are treated as a requirement for the grant of leave under the Rules in cases to which that paragraph applies. Accordingly, interpreting the expression in the same sense as in the Strasbourg case law, leave to remain would not normally be granted in cases where an applicant for leave to remain under the partner route was in the UK in breach of Immigration laws, unless the applicant or their partner would face very serious difficulties in continuing their family life together outside the UK, which could not be overcome or would entail very serious hardship".
42. Therefore even if the judge found that the Appellant could not meet the Immigration Rules, the issue of insurmountable obstacles was one that should properly have been considered. This was particularly relevant in view of the positive findings of fact made concerning the genuineness of the relationship and in the event of paragraph 320(11) being satisfied.
43. Consequently, I am satisfied that the decision of the First-tier Tribunal judge involved the making of an error of law and therefore the decision cannot stand and shall be set aside.
44. Thus the appeal shall be remitted to the First-tier Tribunal where it is anticipated further evidence will be given and factual findings made on all outstanding issues applying the correct legal framework. The positive findings of fact are preserved; they relate to the Appellant being able to meet the English language requirement (paragraph 14), that the Appellant met the financial requirements (maintenance, accommodation paragraphs 15 - 16), that the relationship between the Appellant and the sponsor was genuine and subsisting (see paragraph 21 and 28, 38 and 48).

Decision:

The decision of the First-tier Tribunal did involve the making of an error on a point of law and the appeal is remitted to the First-tier Tribunal.

SM Reeds

Signed

Date: 7th June 2018

Upper Tribunal Judge Reeds