



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

Appeal Number: HU/16234/2016

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 14 February 2019**

**Decision & Reasons Promulgated  
On 01 March 2019**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE APPLEYARD**

**Between**

**MR NAVEED AHMED AWAN  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Ms K Reid, Counsel.

For the Respondent: Mr N Bramble, Home Office Presenting Officer.

**DECISION AND REASONS**

1. The Appellant is a citizen of Pakistan who appealed against a decision of the Respondent refusing further leave to remain in the United Kingdom on the basis of his relationship with his partner. He is married to [BA], a national of Mauritius, who is settled in the United Kingdom. She has two children from her first marriage.
2. His appeal was heard by Judge of the First-tier Tribunal Siddall who, in a decision promulgated on 16 October 2018, dismissed it.
3. The Appellant sought permission to appeal which was initially refused. However, a renewed application was granted by Upper Tribunal Judge

McWilliam. That application was granted on 17 January 2019 and the Judge's reasons for giving permission are: -

*"The appellant seeks permission to appeal against the decision of Judge of the First-tier Tribunal Siddall to dismiss his appeal.*

*It is arguable that the judge addressed his mind to whether the relationship was genuine and "loving" rather than subsisting. It is arguable that the judge did not give adequate reasons in the light of the appellant at the time of the hearing having lived with the sponsor for 3 years despite having lived apart for a time."*

4. Thus, the appeal came before me today.
5. Ms Reid relied upon the grounds seeking permission to appeal. Therein it can be seen that the only issue before the Tribunal was whether the Appellant was in a genuine and subsisting relationship with his sponsor and whether they intended to live together permanently in the United Kingdom. At paragraphs 50 and 51 of the decision the Judge had concluded that these requirements were not met. At paragraph 50 the Judge takes into account WhatsApp messages which she concluded demonstrated that the Appellant and Sponsor were not living together for much of the time until around April or May 2015. There was discussion about the moving of his clothes to the Sponsor's home in April of that year. The Judge took into account evidence in relation to the Appellant working night shifts to secure better income and different jobs in the Hatfield area to "make ends meet". The Judge concluded that the messages suggested a "reluctance to move in" on the part of the Appellant coupled with a degree of frustration from the sponsor. The Judge also found that there were points in time when both the Appellant and sponsor were considering moving away with no apparent commitment to moving house together. The Judge rejected the Appellant's explanation for why he was staying in Hatfield as a "good reason consistent with a continuing intention to live together permanently in the United Kingdom". The Judge found that the Appellant appeared to be avoiding living with his wife in the period from the summer of 2013 to spring of 2015 and that this evidence did not demonstrate an intention to live together permanently thereby not satisfying the Immigration Rules.
6. However, Counsel referred me to paragraph 35 of the Judge's decision and the findings therein relating to the Appellant spending more time with the sponsor in Leytonstone and at paragraph 36 of the decision, messages suggesting that at this point the Appellant and the sponsor were cohabiting to a greater extent. This is also referred to at paragraph 55 of the Judge's decision where in addition there is an acceptance that there had been "a sexual element" to the relationship between the Appellant and sponsor. I will record here though that the Judge also found within paragraph 55 of the decision a reluctance on the part of the Appellant to move to Leytonstone from the point at which his studies finished in Spring of 2015 and a recording that the Appellant's initial leave to remain as a spouse "ran out in December 2015". Counsel urged me to accept that the Judge has placed "disproportionate weight" on the Appellant's apparent

reluctance to move in with the sponsor. The Appellant explained that he was continuing to live in Hatfield as he was earning more at Sainsburys there than he would in Leytonstone. In considering the Appellant's explanation the Judge had erred in failing to take into account the fact that one of his other employers "Sweet Gallery" was based in London and not Hatfield. This is an erroneous finding which undermines the Judge's conclusion. It is often the position that couples have to live separately for extended periods of time in order to find employment and support their families. It was not open to the Judge, on the evidence, to conclude that the Appellant did not intend to live permanently with the sponsor.

7. Mr Bramble urged me to consider the decision as a whole and particularly paragraphs 29 to 31 where the Judge analyses transcripts of Facebook and WhatsApp messages. He asked me to accept that the Judge had "done sufficient" and had come to a conclusion that was open to be made.
8. I find that to be the case. The decision, when looked at as a whole, shows that the Judge has considered the totality of the evidence before coming to conclusions that were open to be made. I appreciate that at paragraph 56 of his decision the Judge refers to the Appellant not having demonstrated to the required standard that he had entered into a "genuine and loving relationship" with the sponsor. This was a further point of criticism raised by Ms Reid. However, it is plain that from any reading of the decision as a whole that the Judge has applied the correct tests.
9. At paragraph 51 of the decision the Judge finds that the Appellant is not "in a genuine and subsisting relationship". The Judge has gone on to adequately reason why she came to that conclusion. Likewise, in relation to whether the Appellant and sponsor intended to live together permanently in the United Kingdom.
10. Contrary to the grounds the Judge has considered the totality of the evidence and made findings which were open to be made on the evidence. The Judge had the benefit of both oral evidence on the day and the written material. It was always open for the Judge to consider what weight she felt it appropriate to place on the evidence that was before her. Adequate reasons have been given as to why the Judge came to the conclusion that she did. The grounds are no more than a disagreement with the Judge's findings.
11. There is here no material error of law.

### **Notice of Decision**

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

I do not set aside the decision.

No anonymity direction is made.

Signed

Deputy Upper Tribunal Judge Appleyard  
February 2019

Date: 26