



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/16913/2017

THE IMMIGRATION ACTS

**Heard at Glasgow
on 21 February 2019**

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

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

HINDA [F]

Appellant

and

ENTRY CLEARANCE OFFICER, U.S.A.

Respondent

For the Appellant: No legal representative; sponsor present
For the Respondent: Mr A Govan, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant has permission to appeal against the decision of FtT Judge Doyle, promulgated on 3 September 2018, dismissing her appeal against refusal of entry clearance as a spouse.
2. The ECO refused entry clearance because the evidence did not establish the validity of the marriage, and because the required evidence was not produced to meet the financial requirements of the rules.
3. The FtT accepted the validity of the marriage, but dismissed the appeal because even if the financial requirements could be met at some later date, the remedy was to present a further application.
4. The appellant's grounds are set out at [2(i) - (iii)] of her application dated 17 September 2018. They are based on the best interests of the child of the appellant and sponsor.

5. The sponsor, Mr [I], addressed me on his desperation to have his wife and son living with him at last; the expense of proceedings to date, and of any further application; his gratitude for being recognised as a refugee; his hard work in the UK; and his desire to integrate.
6. I have considerable sympathy for the family situation. Mr [I] impressed me as entirely genuine. However, the first question is whether the making of the decision of the FtT involved the making of an error on a point of law, such that it ought to be set aside. No such error has been shown.
7. It is usually in the best interests of any child to live with his parents, if they are living together, or to have regular contact with both parents; but that does not generally override the requirements of the immigration rules. There was no evidence before the FtT by which it might rationally have come to another conclusion, based on the child's interests.
8. Where it appears that a future application to the respondent has good chances of success, it can very seldom be appropriate to allow an appeal on article 8 grounds because it is disproportionate to expect that application to be made.
9. Mr [I] explained that another application has not been made, partly because he sends money to his family in the USA, which makes it difficult to save up the significant costs of application, and because so much money has already been spent. However, article 8 is not a way out of that problem. It may be unfortunate that money has been wasted so far, but it was pointless to go ahead with applications which did not meet the requirements of the rules, and with appeals which had no real chance of success.
10. It is up to the appellant (and sponsor) how to proceed further. The UT cannot offer advice or predict outcomes. That said, however, if and when the appellant (and the child of the family) make further applications, they may wish to ensure that they are carefully supported by all required evidence. The immigration rules are designed to be operated that way, not by making cases better after the application has been made.
11. The decision of the First-tier Tribunal shall stand.
12. No anonymity direction has been requested or made.



26 February 2019
UT Judge Macleman