



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: IA/42420/2013

THE IMMIGRATION ACTS

Heard at Field House  
On 8 October 2014

Determination Promulgated  
On 14 October 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE J M LEWIS

Between

FA  
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: None

For the Respondent: Miss S L Ong, Home Office Presenting Officer

DETERMINATION AND REASONS

**The History of the Appeal**

1. The Appellant, was born on 3 March 1978 and is a citizen of Bangladesh.
2. The Appellant entered the UK on 19 September 2009 with leave to enter as a student valid until 31 December 2012. On 19 December 2012 she applied for leave to remain

as the spouse of a person present and settled in the UK. He was a British citizen. Her application was refused on 18 July 2013. Her ensuing appeal, in which both parties were represented, the Appellant by her present solicitors, was heard by Judge Afako sitting at Taylor House on 5 June 2014 and allowed under the Immigration Rules in a determination promulgated on 19 June 2014. Permission to appeal was granted to the Respondent on 19 August 2014 by Judge Ransley, essentially on the grounds discussed below. Procedural directions were issued on 27 August 2014.

3. The error of law hearing was listed for 8 October 2014 at 2pm. By 3.30pm, when I reached the appeal, there was no appearance by or on behalf of the Appellant. A letter from her solicitors attached a copy of their email request of 29 August 2014 to the Appellant for instructions and stated that they were without instructions.
4. Notice having been given to the Appellant and to her solicitors and there being no explanation for the Appellant's absence, I heard the appeal in her absence. It took the form of brief submissions by Miss Ong, which I have taken into account. I reserved my determination.

### **Determination**

5. The Refusal Letter is a necessarily lengthy excursus through the alphabetically coded provisions of Appendix FM to the Immigration Rules.
6. Section R-LTRP.1.1(d) provides that the requirements for limited leave to remain in the UK as a partner include the applicant not falling for refusal under Section S-LTR: suitability for leave to remain and meeting the requirements of paragraphs E-LTRP.1.2-1.12 and 2.1.
7. Section S-LTR.2.2 provides that, whether or not to the applicant's knowledge, in relation to the application false information, representation or documents have been submitted or there has been a failure to disclose material facts. Judge Afako found that, at the date when the Appellant and the Sponsor went through a civil ceremony of marriage in the UK, the Sponsor was not free to marry because, although his first wife had been granted an Islamic divorce from him, she had not been granted a civil one. In her application the Appellant had not stated that the Sponsor was not yet free to marry, so that her application had to be regarded as that of a fiancée, not a spouse. Judge Afako found that she had acted in good faith. However this was not to the point, because her failure to disclose this unarguably material fact in relation to the application fell for refusal under Section L-LTR.2.2 by reason of the words "Whether or not to the applicant's knowledge". In finding at paragraph 9 of the determination that the refusal on suitability grounds under Section S-LTR.2.2 could not be sustained because the Appellant was not aware that there was anything amiss with the Sponsor's status, the judge fell into error.
8. Section R-LTRP also requires an applicant to meet the requirements of paragraphs E-LTRP.1.2-1.12 and 2.1. Section E-LTRP.1.8 states that if the applicant and partner

are married or in a civil partnership it must be a valid marriage or civil partnership as specified. At paragraph 11 the judge concluded that the Appellant and her partner were not married and were no longer relying on that relationship. So he found that Section E-LTRP.1.8 was not in point. This finding was open to him.

9. It followed, therefore, that the status of the Appellant and the Sponsor was that of fiancés. The judge should therefore have considered paragraph E-LTRP.1.12, which requires that the applicant's partner cannot be the applicant's fiancé(e) unless the applicant was granted entry clearance as that person's fiancé(e). This was not the capacity in which the Appellant had been granted entry clearance. Paragraph E-LTRP.1.12 was therefore infringed.
10. In the Refusal Letter the Respondent considered paragraph EX.1 and gave reasons why it was not applicable. This conclusion is not challenged. Nor is the conclusion in the Refusal Letter that paragraph 276ADE of the Immigration Rules, relating to private life, could not be satisfied.
11. The judge erred in law, both as to paragraph S-LTR.2.2 and as to paragraph E-LTRP.1.12. These errors were material to the decision. The determination cannot stand, and I set it aside.
12. Making the decision again, it follows from my reasoning that the appeal must fail. For those reasons I dismiss it.
13. I preserve the anonymity direction made by Judge Afako.

### **Decision**

14. The original decision contained an error of law and is set aside.
15. The appeal is dismissed under the Immigration Rules.

Signed

Dated: 13 October 2014

Deputy Upper Tribunal Judge J M Lewis