



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

Appeal Number: OA/00834/2013

THE IMMIGRATION ACTS

Heard at Field House

On 11 March 2014

**Determination given
following hearing**

Determination

Promulgated

On 17 September 2014

immediately

Before

**THE HONOURABLE MR JUSTICE PARKER
SITTING AS A JUDGE OF THE UPPER TRIBUNAL
UPPER TRIBUNAL JUDGE CRAIG**

Between

MONAZA SADAF

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Qureshi, Counsel

For the Respondent: Mr P Deller, Home Office Presenting Officer

DETERMINATION AND REASONS

1. This is an appeal brought by Mr Monaza Sadaf against the determination of Judge Lucas of the First-tier Tribunal. The appellant, a citizen of

Pakistan, born on 17 March 1990, appealed against the decision of the Entry Clearance Officer, Islamabad made on 19 November 2012 to refuse to grant her entry clearance for settlement under paragraph 281 of HC 395. At the hearing before Judge Lucas the appellant was represented by Mr Qureshi of Counsel and he appeared on the hearing of this appeal. At that hearing the respondent was represented by Mr Carol of Counsel but today Mr Deller has appeared on behalf of the respondent to this appeal.

2. The decision letter said that there was no evidence of a subsisting relationship between 2009 and 2012 and that was the issue before the First-tier Tribunal. The First-tier Tribunal heard evidence from the sponsor and the sponsor had provided a witness statement dated 9 December 2013. In that witness statement he said that he had married the appellant on 19 November 2009, the appellant was his cousin, that he had gone to Pakistan in order to marry, that he had stayed there for about six weeks and he was in regular contact with his wife and he went every year to meet his wife and he had recently visited his wife from 10 October 2013 to 29 November 2013. The sponsor, as we have noted, gave oral evidence. Mr Qureshi explained that he believed that the sponsor was rather nervous and, to a certain extent, confused when he gave evidence and possibly when in particular he was cross-examined by Mr Carol for the respondent.
3. The question was raised as the hearing whether an interpreter was appropriate in those circumstances. Mr Qureshi has frankly acknowledged today that he did not press on Judge Lucas the necessity for an interpreter. It appears that Mr Qureshi took the view that the sponsor was able from a linguistic point of view to understand the questions that were being put and that the use of an interpreter would not have sufficiently improved his understanding from a linguistic point of view of the questions, nor his ability to answer, also from a linguistic point of view. Of course, as we observed during the hearing of this appeal, Mr Qureshi was best placed to make that assessment, taking the view that the ability to understand and answer would not have been materially improved by the introduction of an interpreter. In other words, the difficulty as was perceived in the sponsor answering the questions derived from the intrinsic nature of the questions he was being asked and from the trouble that he was having in giving convincing answers to those questions.
4. The judge having heard the evidence and taken other matters into account, reached the conclusion that there was no evidence of a subsisting relationship over the period from the marriage in 2009 until the date of the application and he also noted in the same paragraph that the burden of proof was on the appellant.
5. Permission to appeal the First-tier Tribunal determination was granted by Judge Hemingway, a Judge of the First-tier Tribunal. He said, so far as is material,

“The grounds of application consisted of a series of disagreements with the way in which the judge approached the evidence and a matter of contention the decision was against the weight of evidence. The analysis of the evidence is brief and it is arguable that the judge erred in failing to have regard to the sponsor's oral evidence, failing to make a clear finding as to the credibility of the sponsor and failing to engage with the sponsor's explanation as to why there was a delay in the entry clearance application being lodged.”

6. Mr Qureshi today urges upon us the submission that indeed there was an error of law. He has accepted quite rightly that to establish an error of law in the present context it would be necessary to show that the Judge of the First-tier Tribunal either disregarded evidential material that was put before him or failed to take account of the evidential material that was put before him or, upon that material, reached a decision that no rational decision-maker could have reached.
7. We reject that submission for the following reasons. It is quite plain in our judgment that the Judge of the First-tier Tribunal did have regard to relevant material. He had before him the witness statement of the sponsor to which reference has been made. He heard the sponsor give oral evidence and be subject to cross-examination. It does appear from the frank acknowledgment made by Mr Qureshi that the sponsor may not have come across at all as a particularly effective witness not, as we have pointed out, from linguistic problems, but from the difficulties that he was having in explaining his position credibly to the First-tier Tribunal.
8. The First-tier Tribunal did for example consider the contacts that the sponsor had had. The judge referred at paragraph 17 to the fact that there had been visits on an annual basis. However he pointed out that the evidence also showed that the sponsor had other family members to whom he was sending money but there was no indication that he had seen the appellant as opposed to other members of his family.
9. In our judgment the judge was entitled to look for supporting material and he did look diligently for such material because he referred to the photograph of the wedding. However that was the only material put before him and he did not believe, and this was a matter for his assessment, that that material credibly reinforced the evidence given by the appellant.
10. Before us today Mr Qureshi has pointed to other photographs that he says shows that the appellant was at the material time with the sponsor. However, we probed this aspect with Mr Qureshi and he accepted that those photographs were not drawn to the attention of the judge and nor was the explanation given that is now advanced that those photographs had been available and had been sent to the respondent.

11. In our judgment, particularly where a party is represented, if such additional material is to be put to the judge it must expressly be put or an explanation given as to why that material is not available. On any view the appellant through the sponsor had a perfect opportunity to either put such material or, if it was not available, to explain why it was not so available. No such steps were taken and in those circumstances it is simply not open to the appellant to say that the judge made any error of law in dealing with that point.
12. Mr Qureshi also says that there was evidence before the First-tier Tribunal that payments made to relatives of the sponsor were indeed earmarked for the appellant and in that connection he drew attention to the application in which the appellant recorded where she lived. However there is no indication on the face of that document that the appellant was referring to her mother and father-in-law. It is no more than a bare address. It was certainly open to the appellant to explain that that document did refer to the relatives in question but that does not appear to have happened. In any event, that document was before the Tribunal, and again it was perfectly open for the appellant to draw it specifically to the attention of the judge.
13. In paragraph 13 the judge in fact does acknowledge that the sponsor had said in his evidence that he had no need to send money directly to the appellant since she lived with her parents and there were cultural reasons why she could not collect the money. Therefore it does appear that he had regard to that evidence in any event but was not able to reach a conclusion about the subsistence of the marriage on the basis of that assertion. It is notable in the present context that the appellant herself did not even provide a recent witness statement in order to corroborate, for example, the answers that she had given on her application and to amplify those answers so as to strengthen the position and to particularise what was stated there in fairly bald terms. The First-tier Tribunal did refer specifically to the surprising absence of any such evidence before it.
14. As to the ongoing contacts, the Tribunal did have regard to the statement made by the sponsor that is also supported by the application that there had been telephone contact. However, there was no telephone record or record of the alleged Skype contact that could support this bare assertion. Therefore it appears to us that the First-tier Tribunal did have regard to the evidence before it, both the witness statement, the oral evidence and the other matters to which we have referred. However the Tribunal was not persuaded on the balance of probability that such evidence did show that there was a subsisting marriage over the period.
15. The judge granting permission appears to suggest that it was necessary for the First-tier Tribunal to say specifically that it was not going to accept the sponsor's oral evidence and to make a clear finding as to the sponsor's credibility.

16. In our judgment that is simply not necessary. It is plain on the face of the determination that the judge did carefully take account of what he had heard from the sponsor and the other matters to which we have referred. However, at the end of the day he was not persuaded that the account given by the sponsor was credible and he explained his reasons for rejecting that account. That is all that is necessary in the present context and we would not support the suggestion that anything more is expressly needed so as to avoid an error of law.
17. The decision therefore is that there was no error of law in this case. The First-tier Tribunal had proper regard to all relevant evidence before it and did not exclude any evidence that was relevant. It also reached a finding of fact that was reasonably open to it on the basis of the evidence that it heard.
18. Therefore for those reasons the determination is upheld and this appeal is dismissed.

Signed:

A handwritten signature in black ink, appearing to read 'Ken O'Leary', is written over a light blue rectangular background.

pp The Honourable Mr Justice Parker
September 2014

Date: 16