



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

Appeal Number: OA/04233/2013

THE IMMIGRATION ACTS

**Heard at Field House
On 15th December 2014**

**Determination Promulgated
On 16th December 2014**

Before

**UPPER TRIBUNAL JUDGE ALLEN
UPPER TRIBUNAL JUDGE COKER**

Between

**RAZNA BEGUM
(anonymity direction not made)**

Appellant

And

ENTRY CLEARANCE OFFICER - Dhaka

Respondent

Representation:

For the Appellant: Mr M K Mustafa of Kalam solicitors

For the Respondent: Mr P Duffy, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant appeals a decision of the First-tier Tribunal which dismissed her appeal against a decision by the Entry Clearance Officer to refuse to issue her with entry clearance as the spouse of a British Citizen residing in the UK on the grounds that the ECO was not satisfied that the appellant's marriage was genuine or subsisting (paragraph 281(iii) Immigration Rules) or that there would be adequate accommodation without recourse to public funds (paragraph 281 (iv)).

2. Permission to appeal had been granted on the basis that it was arguable that the findings of the First-tier Tribunal were insufficient to justify the conclusion in paragraph 22 of the First-tier Tribunal determination that the marriage was not a genuine and subsisting marriage.
3. The First-tier Tribunal heard oral evidence from the appellant's spouse and submissions from both representatives. The judge referred to the evidence, both oral and documentary, before him and sets out the submissions made. He correctly directed himself (in [20]) to the burden and standard of proof and the need to take cultural aspects into account and made the following findings of fact:
 - a. There is an age difference of over forty years between the appellant (aged 31) and her spouse (aged 77) [20].
 - b. The appellant has been previously married; that marriage is dissolved and she has two children from that marriage aged 7 and 11 [20].
 - c. The current marriage is an arranged marriage [20].
 - d. There is evidence that the appellant was interviewed and indicated in that interview that she was going to care for her husband; there may be an aspect of this that was lost in translation and what she really meant was that they would care for each other. However given the sponsor's circumstances namely his age and his ill health...it would be reasonable to conclude that the appellant will be acting as his carer in the future. That may not necessarily preclude an assessment that the marriage is genuine and the intentions of the parties is to care for each other as husband and wife [21].
 - e. The appellant had not sought to bring her children with her [22].
 - f. It was implausible and untenable that consular officials had told her to delay bringing the children [22].
 - g. Although there is evidence of telephone contact and money remittances there is no evidence of affection or affectionate rapport [22].
 - h. Time spent together in the last three years has been sporadic and minimal [22].
 - i. Sponsor has made no effort to ensure an appropriately improved marital home [22].
 - j. Sponsor made no enquires about possible employment for the appellant to meet her purported desire to be able to provide for her children [22].
4. The First-tier Tribunal Judge concluded that overall he was not satisfied the marriage was genuine and subsisting [22].
5. Mr Mustafa drew our attention to the IDIs on "Genuine and subsisting marriages" which set out various factors that it was submitted were to

be taken into account in assessing the genuineness and subsisting nature of a marriage. We do not accept that the fact that the appellant does not fall within one of those listed factors means that there is an error of law in the First-tier Tribunal determination. Those factors (set out in paragraph 3.2 of the IDIs) are factors that, if they exist, may require further and additional scrutiny. They do not of themselves identify that a marriage is or is not genuine and subsisting.

6. Mr Mustafa submitted that the judge had placed inordinate weight upon the age gap, allowing this to infect the findings overall and that to dismiss the appeal on the basis of the age gap potentially amounted to indirect discrimination on the basis of age. He identified 3(d) above as a conflict upon which the judge had failed to reach a conclusion. We do not agree. The judge was merely setting out the evidence he accepted, namely that she had said this, and that there were possible different interpretations. Mr Mustafa submitted that the fact that the appellant chose to leave her two children in Bangladesh had no bearing on the genuineness of the marriage and that the sponsor had said he wished to play an active part in their upbringing. Mr Mustafa disagreed with the judge's description that the three periods of residence together by the couple amounted to only sporadic or occasional cohabitation. We consider these were all matters that the judge quite properly considered in reaching his decision; that another judge may have reached a different conclusion does not render this decision perverse or *Wednesbury* unreasonable.
7. Overall we are satisfied, as submitted by Mr Duffy, that the appellant's grounds and submissions are, in essence, taking issue with the weight placed upon the evidence before the judge. It is possible that another judge hearing the same evidence and viewing the same documents could legitimately have reached a different conclusion. That this judge placed weight on the age gap; that the sponsor was leaving her children in Bangladesh; that there had been no evidence of improving the marital home or investigation of possible employment opportunities (two findings that were not challenged before us); that they had cohabited for the periods of time they had and the lack of other evidence in connection with devotion and affection are matters that the judge was clearly able to consider. Taking account of the age gap does not amount to indirect discrimination. The judge plainly looked at all the evidence before him and reached conclusions that were plainly open to him. He did not view the evidence through the prism of the age gap but correctly factored that evidence in to his overall assessment.
8. Although not pleaded before us and although no mention was made by either representative, we have noted that the ECO refused entry clearance not only on the basis of the genuine and subsisting nature of the marriage but also on the issue of adequate accommodation. It appears that the First-tier Tribunal judge only referred to this in passing and then only in terms of part of his assessment of the genuineness of the marriage. It is plainly an error of law to fail to deal

with all issue but given the First-tier Tribunal judge had found that the marriage was not genuine and subsisting there was, in practical terms, little necessity to make a finding on accommodation. Likewise we make no finding: there is no error of law in the judge's finding that the marriage was not genuine and subsisting.

Conclusions:

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

We do not set aside the decision; the decision of the First-tier Tribunal stands namely the appeal against the refusal to grant entry clearance is dismissed.

Date **15th December 2014**

Upper Tribunal Judge Coker