



**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: OA/06599/2013**

THE IMMIGRATION ACTS

Heard at North Shields

**On 21 August 2014
Signed 22 August 2014**

**Determination
Promulgated
On 28 August 2014**

Before

UPPER TRIBUNAL JUDGE RICHARD CHALKLEY

Between

MRS MST MALA BEGUM

and

ENTRY CLEARANCE OFFICER, DHAKA

Appellant

Respondent

Representation:

For the Appellant: Ms R Pickering, Counsel instructed by David Gray and Co
For the Respondent: Mr P Mangion, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The Appellant is a citizen of Bangladesh who appeals against the decision of the Respondent, the Entry Clearance Officer Dhaka, taken on the 28 January 2013, to refuse her application for a settlement visa join her spouse Lala Miah, "the Sponsor".
2. The appeal was heard by First-tier Tribunal Judge Cope at North Shields on the 6 January and the 19 January, 2014. The judge refused the Appellant's appeal finding the Sponsor not to be credible.

3. The issue before the judge was whether the Appellant had adequately demonstrated that her relationship with the Sponsor was genuinely subsisting at the time of the application and that she intended to live together permanently in the United Kingdom.
4. It appears that towards the end of the cross examination of the sponsor, First Tier Tribunal Judge Cope realised that he had heard similar evidence from the witness in another, unrelated appeal. During a break in proceedings the judge interrogated his computer and found that the sponsor had been a witness in a visitor appeal he had heard more than 18 months earlier. He noted that he had found the sponsor not to be a credible witness on that occasion. He had found the sponsor not credible, because in the earlier appeal the sponsor had given evidence as a witness that he claimed to be working when in fact he was not working.
5. The judge told both parties representatives. In fact they had also both appeared before him in the previous appeal and the judge concluded that both representatives were aware at the beginning of this appeal that this was the case. Having read out various parts of his earlier determination to the parties, the judge then reminded himself that in the previous appeal the Sponsor was found not to be credible because he claimed to be working when in fact he was not working. The judge noted that the Sponsor appeared to be repeating the same claim and decided that this reflected adversely to a significant degree on the Sponsor's credibility.
6. There was no reason, he found, to make it inappropriate for him to consider hearing the appeal and in doing so he purported to apply *Secretary of State for the Home Department v D (Tamil)* [2002] UKIAT 00702 * (formerly known as Devaseelan) and used his finding in the earlier appeal that the sponsor was not a credible witness as a starting point for his findings as to the sponsor's credibility in this appeal.
7. I was urged by Mr Mangion to find that there was no error in the judge's determination. He pointed out that the judge had given every opportunity to the Appellant's representatives and had pointed out to them that they had also appeared before him. He suggested that the judge had not erred by applying *D (Tamil)* in those circumstances and the judge was entitled to treat the representatives as having, effectively, waived any potential objections they might have to him hearing the appeal.
8. Ms Pickering reminded me that the issues were whether or not a bystander would believe that the proceedings were conducted fairly. Given that the judge has made an adverse finding in respect of the Sponsor in an earlier appeal and then appears to have adopted that finding and made further adverse findings and dismissed this appeal. He should have declined to continue hearing the appeal once he remembered the earlier hearing and the adverse finding he made in respect of the sponsor's credibility. The Appellant and her representatives were clearly taken by surprise and the earlier

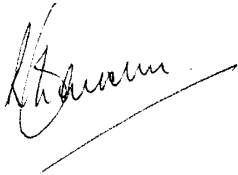
determination was not something that had been filed by the parties or which they were aware of before the hearing. The Appellant was not of course present and was denied the opportunity of properly responding.

9. Counsel addressed me briefly in respect of the third challenge on which permission had been granted. She suggested that the judge had failed to ask himself the correct questions. The issue for him was maintenance and the intention of the parties to permanently live together. His decision is notably coloured by his previous adverse credibility finding. She suggested that since the Appellant had been denied a fair hearing, the only appropriate course would be for the matter to be remitted to the first hearing before a judge other than Judge Cope.
10. I have concluded that Judge Cope has materially erred in law in his determination. I set aside his determination.
11. No criticism is made of the judge for having failed to remember immediately, that more than eighteen months previously he had heard evidence from the Sponsor who was sponsoring another appellant in a visitor appeal. One can hardly expect the representatives to remember the case either. However, it appears from his determination that First-tier Tribunal Judge Cope realised, having heard cross-examination of the Sponsor, that the Sponsor had appeared before him as a witness in a completely different appeal. At the end of his cross-examination he found a copy of the determination on his computer and noted that he had dismissed the earlier appeal and in the course of his determination he had made adverse findings about the credibility of this Sponsor as a witness in that earlier case. The judge considered the matter and concluded that the representatives appearing on behalf of the Appellant and the Sponsor were effectively waiving any potential objections they may have to him hearing the appeal. He appears to have read out parts of his earlier determination where it relates to the Sponsor's evidence, but not give a copy of that determination to either representative. Instead he purported to apply *D (Tamil)* and, having reminded himself that the Sponsor had been found not credible in the earlier appeal, (which was completely unconnected with this Appellant) concluded that since he had given very similar evidence (to the effect that he was working, when in fact he had not been working) what the sponsor had said in oral evidence "to a very significant degree" and personally reflected on the sponsor's credibility.
12. As Counsel pointed out, the Appellant was not present and did not have a proper opportunity to respond to this evidence. The earlier determination in question had not been copied for the representatives and they were not offered an adjournment so that they might consider the position.
13. I believe that the judge erred by proceeding to hear the appeal himself having realised that the Sponsor was someone in respect of whom he

had made adverse findings of credibility in an earlier and unconnected appeal.

14. I agree with Counsel; the Appellant has effectively been denied the opportunity of a fair hearing. It seems to me that this is an appropriate case, bearing in mind the Senior President's Practice Statement, where the correct course would be to remit this appeal to the First-tier Tribunal for a fresh hearing before an Immigration Judge other than Immigration Judge Cope.

I believe that two hours should be allowed for the appeal and that a Bangladeshi interpreter with Sylheti dialect should be booked for the hearing.



Signed

Upper Tribunal Judge Chalkley