



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

Appeal Number: HU/03800/2015

**THE IMMIGRATION ACTS**

**Heard at Field House**

**On 8 November 2017**

**Decision & Reasons  
Promulgated**

**On 23 November 2017**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE NORTON-TAYLOR**

**Between**

**MR ZUBAIR SHAH  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Ms K Currie, Counsel, instructed by Marks & Marks Solicitors

For the Respondent: Mr D Clarke, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge Parkes (the judge), promulgated on 8 February 2017, in which he dismissed the Appellant's appeal against the Respondent's refusal of entry clearance, dated 30 July 2015. The application for entry clearance had

been on the basis that the Appellant wished to join his wife, a British citizen, in this country. The refusal notice raised two issues: the nature of the relationship and the financial requirements under Appendix FM.

### **The judge's decision**

2. There was no Presenting Officer at the hearing (an occurrence which makes nobody's life any easier). The judge makes a number of adverse findings in respect of the relationship. These findings relate to the absence of photographs of the couple together, the inclusion of the Appellant's name on a utility bill, the failure of the sponsor to visit the Appellant in Pakistan, and the unclear nature of telephone call records. The judge also finds that specific financial evidence was not provided and therefore the appeal would have failed in light of Appendix FM-SE in any event.

### **Grounds of appeal and grant of permission**

3. The grounds in essence make two points. First, the judge failed to consider an explanation provided by the sponsor as to why she had not visited the Appellant in Pakistan (she was unable to take time off work). Second, that the judge had failed to raise at the hearing certain concerns relating to the evidence before him, specifically that connected with photographs, the telephone records and the utility bill. The issue relating to the financial requirements is also challenged. It is said that the judge failed to have regard to the declaration contained in the application and replicated at page 26 of the Appellant's bundle.
4. Sitting as a Judge of the First-tier Tribunal, I granted permission to appeal on 5 September 2017 on the basis that all of the grounds were arguable.

### **The hearing before me**

5. At the outset of the hearing Mr Clarke helpfully confirmed that he conceded that the judge had erred in respect of the financial requirements. The relevant declaration had in fact been contained in the application form, as claimed. Therefore, if there were errors in respect of the relationship issue, the decision of the judge should be set aside.
6. Ms Currie relied on the grounds. In respect of the visits issue, she submitted that the sponsor had clearly said that she could not get time off and this was the main reason as to why she was unable to visit the Appellant. This evidence had been provided orally at the hearing. In respect of the telephone records, these had been provided to the Respondent with the application and there was nothing in the refusal

notice which took any material issue with their contents. The judge had not raised any concerns at the hearing. Ms Currie submitted that if the judge had raised the concerns subsequently set out in his decision, there were reasonable explanations which could have been provided in respect of the dates, the period of time which they covered and the numerous 00.00 duration calls. There was evidence before the judge as to who the relevant telephone numbers belonged to. Although, as Ms Currie accepted, some of the evidence may have appeared somewhat confusing, the substance of it was material to the genuineness of the relationship. The points taken by the judge were technical in nature. In respect of the utility bill, the judge had failed to take account of the evidence that the Appellant did not know in advance that he would be leaving the United Kingdom in April 2012. He left as a result of his college being closed down at that time, and therefore the fact that his name had been put onto a utility bill in March of that year could not be seen as contrived in any way contrary to what the judge appears to have found. In respect of a lack of photographs of the couple in the United Kingdom, the judge had failed to appreciate that the couple had only lived together from March to April 2012, a very short period of time. Ms Currie submitted that cumulatively the errors were sufficient to have the decision set aside.

7. Mr Clarke submitted that there were no material errors of law by the judge. In respect of the lack of visits, there had been more than enough savings for these to have occurred and the judge was entitled to find that it was implausible that the sponsor had been unable to get enough time to visit over the course of some three years since the wedding. In respect of the telephone evidence, it was down to the Appellant to explain this clearly, and this had not been done. There was no evidence of any contact between the couple in the period 2007 to 2014. There was no evidence contained in a witness statement as to the nature of contact or any explanations as to the itemised telephone bills. It was clear from the Respondent's refusal notice that the genuineness of the relationship was not being accepted. In so concluding, the Respondent had had regard to the telephone bills that had been previously submitted. There was no evidence that the Appellant had voluntarily departed the United Kingdom and in any event this was only one finding amongst several others. In reply, Ms Currie emphasised that the point taken on the utility bill was misconceived, and that the judge should have had regard to the evidence relating to the telephone bills as a whole. It was clear that the person making the calls was the sponsor and that she was ringing telephone numbers belonging to the Appellant. The period of time covered by the telephone bills and irregularity of contact was significant evidence.

### **Decision on error of law**

8. This has not been an easy case to decide. The evidence presented to the judge was in many respects unsatisfactory. I would particularly note the extremely poor witness statement (if it can be properly described as such)

submitted on behalf of the sponsor. This document reads much more like quasi-legal submissions than a statement of factual information. There is no attempt to explain the history of the relationship or any of the evidence being adduced in support of the appeal. It does nothing to address the concerns raised in the Respondent's refusal letter. The judge was fully justified in criticising this document at paragraph 12 of his decision.

9. In addition, the manner in which the telephone evidence was provided in the Appellant's bundle was confusing. The chronology is muddled and it seems as though printouts obtained by the sponsor herself were inserted in amongst evidence from the relevant mobile phone provider. I also bear in mind the simple fact that it was for the Appellant to prove his case before the Tribunal and that he had the benefit of legal representation at all material times.
10. On the other hand, it does appear as though certain matters of concern which were not expressly raised in the refusal notice were not highlighted by the judge at the hearing. It might be that the absence of a Presenting Officer did not help the judge with the presentation of the case as a whole.
11. Having weighed up the submissions made before me, and having viewed the judge's decision sensibly and in the round, I conclude that there are no material errors of law. My reasons for this conclusion are as follows.
12. First, I refer back to what I have already said in paragraphs 8-9, above.
13. Second, in respect of the lack of visits by the sponsor to Pakistan, it was open to the judge to conclude that she had sufficient savings, over and above those needed to meet the requirements under Appendix FM, to make (at the very least) a single visit to see her husband following the marriage in August 2014. I have been referred to the relevant bank statements and there was clearly a very significant amount in excess of the required sum at all material times. Furthermore, it was open to the judge not to believe the sponsor's evidence that she had simply had no opportunity whatsoever to visit Pakistan due to work commitments. The judge recognises that it might not be easy for visits to be made by a working person. However, as Mr Clarke rightly pointed out, the judge was considering a significant period of time between the marriage in August 2014 and the hearing before him in January 2017. This period of course would have included periods of statutory holiday entitlement, and there was no explanation as far as I can see from the sponsor to the effect that she was being denied what would otherwise be legitimate leave from her employment.
14. Third, in respect of the absence of photographs of the couple together in the United Kingdom, the judge was entitled to take this into account. Although Ms Currie submitted that the period during which they in fact cohabited was only brief, (which I accept to be the case), the fact is that they had known each other since 2007, a much more significant period of time. There is nothing in paragraph 16 of his decision to suggest that the

judge was seeking evidence of photographs relating only to the period of cohabitation.

15. Fourth, in the same paragraph, the judge was fully entitled to take into account the absence of any evidence from either family members or friends, which might have supported the subsistence of the relationship.
16. Fifth, turning to the telephone records, it is the case that there was evidence before the judge to link the relevant numbers to the Appellant and the sponsor. It is apparently also the case that Skype records going back to October 2014 were included in the Appellant's bundle but had not specifically been considered by the judge (although the final sentence in paragraph 22 does indicate that he had seen and borne in mind this additional evidence). The judge was entitled to find that there was no evidence which predated October 2014 in respect of electronic contact between the sponsor and Appellant. The judge was taking this into account in the context of a relationship which had included cohabitation as long ago as 2012. In my view Mr Clarke was right to point out that this was a significant gap and the judge was entitled to take cognisance of the absence of evidence of communications between 2012 and 2014. The judge was also entitled to conclude that no explanation for the absence of such evidence had been forthcoming.
17. As to the format of the telephone evidence, the judge found it to be unsatisfactory, as I have done (see above). It was down to the Appellant and his representatives to present all relevant evidence in a clear and comprehensible way with explanations for any issues arising, whether they could be described as substantive or "technical". The fact that the Respondent's refusal letter had not expressly raised issues related to the telephone evidence did not of itself mean that this was accepted as showing a genuine relationship. It is quite obvious that the Respondent had concluded that that the relationship was not genuine and subsisting. This really should have put the Appellant and his representatives on notice as to the nature and quality of any evidence provided to the Tribunal on appeal. There was no explanation before the judge as to why so many of the calls had a duration time of 00.00. The judge was entitled to take into account the fact that the chronology of the evidence did not make sense. He was entitled to take into account the absence of any evidence from the Appellant and the sponsor as to how their relationship developed (in the context of a previous divorce). The point raised by the judge at paragraph 23 has not actually been challenged in the grounds.
18. Sixth, turning to the utility bill, I see some merit in Ms Currie's submission that the Appellant left the United Kingdom at short notice and that this would tend to show that his inclusion on the utility bill was not contrived. Having said that I cannot see any evidence which shows precisely when the Appellant's college was closed down and when he in fact made the decision to leave the United Kingdom. The reference to the word "when" in paragraph 15 does not necessarily mean that the college closure and the Appellant's departure all occurred in April 2012. Again this appears to

be a case of the evidence presented to the judge being generally unclear and unsatisfactory. Even if the judge has proceeded on a false premise in this respect, such an error would not, taking everything else into account, be material. In saying this I also note the judge's finding in paragraph 18 that the presence of the Appellant's name on the bill does not inevitably show that he was living at the address, and that there was no evidence to show when the sponsor was put onto the relevant bill.

19. Seventh, in overall terms, the findings made by the judge were open to him, as was his general conclusion in paragraph 25:

“Given the concerns that I have expressed above about the evidence and surrounding matters, I am not satisfied that the relationship between the Appellant and sponsor can properly be regarded as either genuine or subsisting. They may be legally married but it is not sufficient to meet the Immigration Rules and on this fundamental issue the evidence provided has significant gaps and evidence that would have assisted is conspicuous by its absence. The Appellant and sponsor have had ample time to address these issues and the benefit of legal advice on how to go about it but have not taken that opportunity.”

20. There are no material errors of law and the decision of the First-tier Tribunal stands.

### **Notice of Decision**

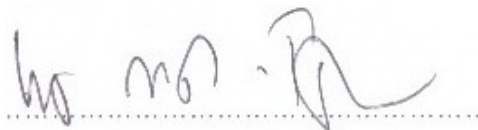
**There are no material errors of law in the decision of the First-tier Tribunal.**

**The Appellant's appeal to the Upper Tribunal is dismissed**

**The decision of the First-tier Tribunal shall stand.**

No anonymity direction is made.

Signed



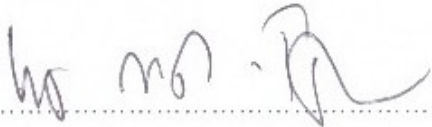
Date: 22 November 2017

Deputy Upper Tribunal Judge Norton-Taylor

**TO THE RESPONDENT**

**FEE AWARD**

I have dismissed the appeal and therefore there can be no fee award.

A handwritten signature in blue ink, appearing to read 'Norton-Taylor', written over a horizontal dotted line.

Signed

Date: 22 November 2017

Deputy Upper Tribunal Judge Norton-Taylor