



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: HU/01161/2017

**THE IMMIGRATION ACTS**

Heard at Field House  
On 8<sup>th</sup> August 2018

Decision & Reasons Promulgated  
On 30<sup>th</sup> August 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE ROBERTS

Between

VIRENKUMAR RAMNIKLAL CHANGELA  
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Mr Biggs, Counsel

For the Respondent: Ms Fijiwala, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The Appellant a citizen of India born 25<sup>th</sup> February 1988 appeals with permission against the decision of a First-tier Tribunal (Judge Veloso) dismissing his appeal against the Respondent's refusal to grant his application for leave to remain in the UK on account of his private and family life as the husband of Ms Vanessa Khetani a

British citizen, “the Sponsor”. The date of the Respondent’s refusal is 29<sup>th</sup> December 2016.

2. The Appellant appealed the Respondent’s refusal on the only ground available namely Article 8 ECHR. The hearing came before FtTJ Veloso. After hearing evidence and considering documentary evidence the judge made a finding that he was satisfied that the Appellant and Sponsor are in a genuine and subsisting relationship and that the marriage entered into by them on 17<sup>th</sup> June 2016 was a valid one.
3. Having made that finding, the judge went on to consider the Appellant’s position under Appendix FM of the Immigration Rules and reached an adverse finding on “insurmountable obstacles”. This finding was then factored into the Article 8 proportionality assessment and the judge dismissed the appeal.
4. Although it is correct to note that there is reference in both the Respondent’s refusal letter and the FtT’s decision to a previous decision whereby an application made by the Appellant for leave to remain had been refused on grounds of deception, nevertheless the only issue before the FtTJ was the genuineness of the marriage.
5. Permission to appeal the FtTJ’s decision was granted by First-tier Tribunal Judge Alis. The grant of permission succinctly sets out the issues before me and the relevant parts of it are set out here;

“2. The grounds argue that the Judge’s approach was flawed because having accepted the marriage was genuine and subsisting and that the parties intended to live together there was no other reason put forward in the decision letter that would have led to a refusal under the Immigration Rules.

3. The application form, submitted by the appellant, indicates that the parties were in receipt of Personal Independence Payment and therefore satisfied section E-LTRP 3.3 of Appendix FM of the Immigration Rules.

4. The Judge went on to consider the application under section EX.1 of Appendix FM of the Immigration Rules and having reached an adverse finding on insurmountable obstacles then went on to consider the case under article 8 ECHR.

5. It is arguable the Judge has erred when considering whether the appellant satisfied the Immigration Rules. If her approach was flawed in this regard then her article 8 assessment is also likely to be flawed. The grounds are arguable.

6. Permission to appeal is granted.”

6. Thus the matter comes before me to decide if the decision of the First-tier Tribunal contains such error of law that it must be set aside and remade.

**Error of Law Hearing:**

7. Before me, Mr Biggs appeared for the Appellant and Ms Fijiwala for the Respondent. At the outset of the proceedings Ms Fijiwala acknowledged that the FtT's decision was erroneous in that the only issue before the FtT centred on the genuineness and subsistence of the marriage. She accepted the judge had made a clear finding that on the evidence before her, she was satisfied that the relationship between the Appellant and Sponsor was a genuine one. There is no challenge to that finding. She said that the Respondent had no further evidence to call and therefore I was in a position to substitute my own decision in this case.
8. In view of the position set out by Ms Fijiwala I did not need to call upon Mr Biggs to address me.
9. I am satisfied that the decision of Judge Veloso contains material error for the reasons set out in the grounds granting permission and I therefore set it aside preserving the finding on the genuineness and subsistence of the marriage. Although there is reference in the papers to a refusal on grounds of deception of a previous application made by the Appellant for leave to remain, this decision attracted a right of appeal and no outcome of this is noted. I am satisfied therefore that the only issue being the genuineness and subsistence of the marriage, the evidence shows that at the date of the Respondent's refusal, the Appellant met the requirements of the Immigration Rules.
10. The fact that an Appellant is able to fulfil the requirements of the Immigration Rules must rank as a weighty factor in determining whether the interference with his human rights is a proportionate one. The Respondent's refusal in this case was solely on the basis of the genuineness and subsistence of the marriage. Accordingly I am satisfied that the refusal amounts to a disproportionate interference with the Appellant's and Sponsor's Article 8 ECHR rights. I remake the decision by allowing this appeal.

**Notice of Decision**

The decision of the First-tier Tribunal promulgated on 19<sup>th</sup> March 2018 is set aside for legal error. I remake the decision under Article 8 ECHR by allowing the appeal of Virenkumar Ramniklah Changela against the Respondent's decision dated 29<sup>th</sup> December 2016.

No anonymity direction is made.

Signed

C E Roberts

Date

20 August 2018

Deputy Upper Tribunal Judge Roberts

**FEE AWARD**

As I have allowed the appeal I make a fee award of any fee paid or payable.

Signed

C E Roberts

Date

20 August 2018

Deputy Upper Tribunal Judge Roberts