



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: HU/01936/2015

**THE IMMIGRATION ACTS**

Heard at Field House  
On 3<sup>rd</sup> April 2018

Decision & Reasons Promulgated  
On 6<sup>th</sup> April 2018

Before

UPPER TRIBUNAL JUDGE REEDS

Between

LEELA RAVI  
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Mr A. Briddock, instructed on behalf of the Appellant

For the Respondent: Mr I Jarvis, Senior Presenting Officer

**DECISION AND REASONS**

1. The Appellant is a citizen of India.
2. The Appellant, with permission, appeals against the decision of the First-tier Tribunal, who, in a determination promulgated on the 13<sup>th</sup> June 2017, dismissed her appeal against the decision of the Respondent made on the 17<sup>th</sup> June 2015 to refuse entry clearance.
3. Permission to appeal was refused initially by the First-tier Tribunal but on renewal was granted by Upper Tribunal Perkins on the 25<sup>th</sup> January 2018.

4. It is not necessary to set out in any detail the factual background to this appeal or the decision reached by the First-tier Tribunal judge. That is because both parties are in agreement that the decision of the First-tier Tribunal judge did involve the making of an error on a point of law. At the hearing before me, both advocates agreed that in view of the grounds that had been advanced when seeking renewal that the only outcome was for the decision to be set aside and for the appeal to be remitted to the First-tier Tribunal for a rehearing. In addition, it is accepted on behalf of the Secretary of State that the judges' finding that the relationship was genuine and subsisting since 1989 (see paragraph 62 of the determination) should be preserved.
5. Given that the parties are in agreement, it is only necessary to set out why I agree with the course set out above.
6. The Appellant made an application for entry clearance as a spouse on 24 March 2015. A decision was made on that application by the Entry Clearance Officer on 18 June 2015 who refused the application. The reasons given were that the ECO was not satisfied that the parties had submitted a genuine marriage certificate and that the Appellant was married to the sponsor given the anomalies which the ECO set out within the decision letter. Furthermore, the ECO was not satisfied that the relationship with the sponsor was genuine or subsisting or they intended to live together permanently in the UK. As to the financial requirements, in order to meet financial requirements of Rules, the sponsor needed to demonstrate an income of £18,600 per annum. The Entry Clearance Officer considered the documents that had been provided with the application and reached the conclusion that the Appellant's sponsor had not provided the necessary specified documents under Appendix FM-SE and refused the application on that ground also. There was no consideration of any human rights claim or Article 8 in the decision letter.
7. The Appellant sought permission to appeal and the appeal came before the First-tier Tribunal on the 26 May 2017. In a determination promulgated on 13 June 2017 the Judge dismissed the appeal under the Immigration Rules and on human rights grounds (Article 8).
8. There is no dispute between the parties that the judge applied the wrong statutory framework and decided the appeal by taking into account repealed statutory provisions (sections 82(2), 85 (5) and 85A of the 2002 Act). In particular, at paragraph [37] the judge made reference to the following, "the 2002 Act is quite clear on the exceptions that apply in relation to new evidence. The rules are further clear on the mandatory nature of the specified evidence." At paragraphs [43] and [45] the Judge took into account that the Appellant had not provided any additional documentation with the appeal to be reviewed by the ECM and whilst the Appellant had provided further evidence relating to the appeal, the judge did not consider that evidence when reaching a conclusion on whether the Appellant could meet the financial requirements in the findings of fact paragraphs 30 – 57 of the determination. As Mr Jarvis conceded, the reason that evidence was not taken into account was because they had been a misdirection made by the judge that she was unable to take those into account. As Mr Jarvis conceded, that was a wrong application of the 2002 Act and was therefore in error.

9. It is further agreed between the parties that the only ground upon which the appeal could be brought to the First-tier Tribunal was that the decision to refuse the Appellant entry clearance was unlawful under Section 6 of the Human Rights Act 1998 that is, it was contrary to Article 8 of the ECHR. The issue for the judge to decide was not only to decide whether the Immigration Rules had been satisfied (although this is a matter of weight in determining the proportionality of denying any entry clearance) but whether refusing entry clearance would be contrary to Article 8 of the ECHR. The Immigration Rules reflect the Secretary of State's (and the ECO's) view as to where the public interest lies in the proportionality assessment under Article 8. A failure to lawfully assess whether the requirements of the Rules are met clearly impinges on the assessment of where the public interest lies in the overarching proportionality assessment required under Article 8.
10. It is further accepted that the Judge was required to consider Article 8 outside the rules. That task had not been undertaken by the Tribunal and it was accepted on behalf of the Secretary of State that the judge was required to engage with the substance of the claim made outside the rules. As the grounds set out, the balancing exercise was not adequately considered at paragraphs 76 - 78 of the determination.
11. In the light of the agreement reached between the parties and as a result of the matters set out in the preceding paragraphs, I am satisfied that the decision of the First-tier Tribunal judge involved the making of an error of law and therefore the decision cannot stand and shall be set aside.
12. One of the findings made by the judge related to the marriage certificate. The grounds seek to challenge the findings made by the judge as to its validity. As Mr Jarvis submits, the judge also made alternative findings on the basis of the reliability of the document. However in the light of the issues relating to validity, I do not preserve those adverse findings of fact and as set out in the preceding paragraph the only findings of fact to be preserved are those set out at paragraph 62 where the judge accepted that the Appellant sponsor had been in a subsisting relationship since 1989 and they had two children as a result of that relationship. Furthermore the findings at paragraph 63 should also be preserved as there has been no challenge to those findings.
13. Thus the appeal shall be remitted to the first-tier Tribunal where it is anticipated further evidence will be given and factual findings made on all outstanding issues applying the correct legal framework.

**Decision:**

The decision of the First-tier Tribunal did involve the making of an error on a point of law and the appeal is remitted to the First-tier Tribunal.

*SM Reeds*

Signed

Date: 3<sup>rd</sup> April 2018

Upper Tribunal Judge Reeds