



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/02709/2017

THE IMMIGRATION ACTS

Heard at Field House
On 29th August 2018

Decision & Reasons Promulgated
On 18th September 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE GRIMES

Between

MISS JAVERIA JUNAID
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

ENTRY CLEARANCE OFFICER

Respondent

Representation:

For the Appellant: Mr P J White, Counsel instructed by Eden Solicitors
For the Respondent: Mr I Jarvis, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant, a national of Pakistan, appealed to the First-tier Tribunal against a decision made by the Entry Clearance Officer (ECO) on 25th January 2017 refusing her application for entry clearance to the UK as a partner under Appendix FM of the Immigration Rules. First-tier Tribunal Judge Whitcomb dismissed the appeal in a decision promulgated on 4th January 2018. The Appellant now appeals to this Tribunal with permission granted by Upper Tribunal Judge Storey on 13th July 2018.
2. The background to this appeal is that the Appellant applied to join the Sponsor in the UK on 11th August 2016. That application stated that it was intended that the couple

would marry on 31st December 2016. The Entry Clearance Officer refused the application as he was not satisfied that the Appellant's relationship with the Sponsor is genuine and subsisting or that the couple intend to live together. The ECO considered that there was insufficient evidence as to how the couple had maintained their relationships and there were no photographs to show how the couple had met. The ECO considered that it would be reasonable that there would be evidence of regular contact, signs of companionship, emotional support, affection and abiding interest in each other's welfare.

3. In considering the appeal the judge made a number of findings of fact. The judge accepted that a proposal was made during a visit by the Sponsor to Pakistan in April 2015, that the marriage was arranged by the parents and that both sets of parents agreed and the Appellant and Sponsor were regarded as engaged [20]. The judge also accepted the evidence given in support of the Appellant that this arrangement was normal in Pakistani culture. The judge accepted that it was agreed between the two families that the marriage would take place in the UK so that an elderly grandparent could attend [21]. The judge accepted that a booking had been made for 31st December 2016 and that evidence of the booking was submitted with the application. The judge accepted that the Appellant and Sponsor will have limited contact with each other and that this was culturally normal [23]. The judge went on to accept "that the relationship is both genuine and subsisting, although conducted in accordance with [cultural] constraints" [24]. The judge took into account that the Sponsor had made a more recent trip to Pakistan to see his fiancée and regarded this as "further evidence of a subsisting relationship" [26]. The judge accepted that there was a revised plan to marry in March 2018 [27].
4. Having made those findings, the judge went on to reach conclusions on the appeal at paragraphs 38-44. At paragraph 38 the judge said:

"I do not doubt the honesty or the genuineness of the Appellant's intentions or those of the Sponsor. I am quite satisfied that the Appellant and the Sponsor genuinely intend to marry and to live permanently in the UK. I accept their witness evidence on that point, and it is also corroborated by the booking of venues for the ceremony and the purchase of jewellery."
5. However the judge went on to find at paragraph 39 that the Appellant fails to meet the requirements of the Immigration Rules that the relationship should be genuine and subsisting. The judge said:

"While I am sure that there is an entirely genuine *intention* to marry, for perfectly valid cultural reasons there is not currently a subsisting relationship, whether of marriage, or of any other kind. The joint intention is that a relationship will commence *in the future*, at the point of marriage. At the moment, the extent of communication, interaction and mutual support is so very limited that I am not able to find that there is a subsisting relationship. Since becoming engaged the Sponsor has visited Pakistan just once during which time other family members were present to chaperone the engaged couple."
6. At the hearing before me Mr Jarvis accepted that there is an inconsistency in the judge's approach. He accepted that the judge had made findings as regards the nature of the

relationship and finding that it was genuine but that he appeared to misunderstand the application of the law to those findings. Although the judge found that there was a genuine relationship it appears that he failed to realise that a fiancée is a partner under the provisions of Appendix FM.

7. I accept the points put forward by the Appellant's representative in his skeleton argument as accepted by Mr Jarvis. There is a significant inconsistency between the judge's findings in particular his expressed finding that the relationship is genuine and subsisting although conducted in accordance with cultural restraints [24] and the finding that he did not doubt the honesty or genuineness of the Appellant's intentions or those of the Sponsor and accepted that they genuinely intend to marry and live together permanently in the UK [38].
8. In accepting that the Appellant and the Sponsor intend to marry the judge accepted that they are fiancés in that they have a genuine intention to marry. Gen.1.2 of Appendix FM includes a fiancée within the definition of a partner. The proper application of Appendix FM to the findings made by the judge lead to a conclusion that the Appellant is a fiancée within Gen.1.2 of Appendix FM with a genuine and subsisting relationship and an intention to live together permanently in the UK.
9. In these circumstances the judge made a material error of law at paragraphs 39 to 41 in concluding, despite the findings made, that the Appellant was not a 'partner' within Appendix FM. This is a material error of law going to the heart of the issues to be determined. No other aspects of the Rules were put in dispute by the ECO. In these circumstances I set aside the decision of the First-tier Tribunal Judge.
10. I remake the decision on the basis of the judge's findings. The Appellant and the Sponsor are in a genuine relationship as fiancés and therefore meet the requirements of Appendix FM. As the Appellant meets the requirements of the Rules on the basis of the judge's findings and as Appendix FM is compliant with Article 8 it is proportionate to the public interest to allow the appeal on human rights grounds. There are no other factors which would weigh in favour of the public interest in this appeal. In these circumstances I remake the decision by allowing the appeal on human rights grounds.

No anonymity direction is made.

Signed

Date: 17th September 2018

Deputy Upper Tribunal Judge Grimes

TO THE RESPONDENT
FEE AWARD

I have allowed the appeal however it is clear that the First-tier Tribunal Judge was only able to meet the positive findings on the basis of the further evidence produced with the appeal rather than that that was before the Entry Clearance Officer. In these circumstances it is not appropriate to make a fee award.

Signed

Date: 17th September 2018

Deputy Upper Tribunal Judge Grimes