



**Upper Tribunal
(Immigration and Asylum Chamber)
Number: HU/08197/2015**

Appeal

THE IMMIGRATION ACTS

Heard at Field House

On 20 March 2018

**Decision & Reasons
Promulgated
On 4 April 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE MCGEACHY

Between

ENTRY CLEARANCE OFFICER, ISLAMABAD

Appellant

and

**MRS WAJEEHA IQBAL
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: Mr P Nath, Senior Home Office Presenting Officer
For the Respondent: Mr Z Nasim, Counsel instructed by Milestone Chambers

DECISION AND REASONS

1. The Entry Clearance Officer appeals, with permission, against a decision of Judge of the First-tier Tribunal Andonian who in a determination promulgated on 23 May 2017 allowed the appeal of Mrs Wajeeha Iqbal against a decision of the Entry Clearance Officer, Islamabad to refuse to grant her entry clearance to come to Britain as the spouse of a British citizen.
2. Although the Entry Clearance Officer is the appellant before me I will for ease of reference refer to him as the respondent as he was the respondent in the First-tier, similarly I will refer to Mrs Wajeeha Iqbal as the appellant as she was the appellant before the First-tier Judge.

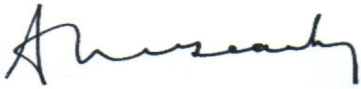
3. The appellant had been refused on the basis that the Entry Clearance Officer did not consider that the marriage was genuine and because he considered that certain of the financial requirements of the Rules were not met. It was also said that the English language certificate could not be verified on-line.
4. Judge Andonian heard evidence from the sponsor and considered a large number of documents. He found that the marriage was subsisting and was genuine, that the financial requirements of the Rules were met and that the appellant also met the English language requirements of the Rules. He then stated that he found that the appellant met the requirements of the Rules and allowed the appeal.
5. The Secretary of State appealed on the basis that the judge did not have jurisdiction to allow the appeal under the Rules as the only ground of appeal before him was whether or not the rights of the appellant under Article 8 of the ECHR were infringed by the decision. The grounds also stated that there appeared to be no evidence to suggest that the couple could not live in the appellant's home country and there was no evidence that in making a fresh application there would be any disproportionate interference with the status quo of the appellant's family life.
6. It was accepted by both parties that I should firstly set aside the determination of the judge in the First-tier Tribunal on the basis that he did not had jurisdiction to allow the appeal under the Immigration Rules but rather should have directed his attention to the issue of whether or not the rights of the appellant to family life with her husband were infringed. I agreed that it would be appropriate on those grounds to set aside the decision.
7. However, I also preserved the findings of Judge Andonian that the appellant met the requirements of the Rules. That was not opposed by Mr Nath. I consider it appropriate to remake the decision.
8. Given that the Rules are human rights compliant and that the appellant met the requirement of the Rules for entry clearance as a spouse and furthermore that there were no countervailing factors which would mean that the refusal of entry clearance was a proportionate response, I now allow this appeal on human rights grounds.

Notice of Decision

The decision of the First-tier Judge is set aside.

The appeal is allowed on human rights grounds.

No anonymity direction is made.



Signed:

2018

Deputy Upper Tribunal Judge McGeachy

Date: 3 April