



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

Appeal Number: HU/06025/2018

**THE IMMIGRATION ACTS**

**Heard at Manchester  
On January 22, 2019**

**Decision & Reasons Promulgated  
On February 12, 2019**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE ALIS**

**Between**

**PHYLLIS [C]  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**ENTRY CLEARANCE OFFICER - UKVS SHEFFIELD**

Respondent

**Representation:**

For the Appellant: The Sponsor, Mr Osunde

For the Respondent: Mr Bates, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant is a national of the United States of America and she applied for entry clearance as a spouse under Appendix FM of the Immigration Rules. The respondent refused her application in a decision dated May 9, 2018 on the basis he was not satisfied the appellant and sponsor were in a genuine and subsisting relationship. The respondent also concluded the sponsor was not employed as claimed and the appellant could therefore not satisfy the requirements of Appendix FM of the Immigration Rules.
2. Grounds of appeal were lodged by the appellant under Section 82(1) of the Nationality, Immigration and Asylum Act 2002 on February 27, 2018.

3. Her appeal came before Judge of the First-tier Tribunal Samimi on September 26, 2018 and in a decision promulgated on October 5, 2018 her appeal was refused.
4. Permission to appeal was sought on October 25, 2018 and Judge of the First-tier Tribunal Doyle granted permission to appeal on November 12, 2018 on the basis it was arguable the Judge erred by not undertaking a freestanding Article 8 assessment.

### **PRELIMINARY ISSUES**

5. Mr Bates, on behalf of the respondent, accepted that the Judge had dealt with Article 8 briefly. The only reference to an Article 8 assessment was contained in paragraph 8 in which the Judge had stated, "I find that the appellant's continued separation from the sponsor in the United Kingdom does constitute a violation of Article 8 of ECHR, however there are no exceptional circumstances in this case". He accepted the Judge gave no reasons and the Judge had not considered any of the medical issues that had been raised in the papers. In the circumstances he accepted there was a material error in law.

### **FINDINGS**

6. Having considered the grounds of appeal, the grant of permission and Mr Bates's submissions I am satisfied there was an error in law. The Judge gave no reasons for concluding there were no exceptional circumstances in the case. This was a marriage of some eight years standing and there were existing medical issues. It was incumbent upon the Judge to consider those factors and if ultimately the Judge concluded there were no compelling circumstances to allow the appeal under Article 8 then such a finding could have been made. In the absence of any reasons I find there is a material error in law.
7. In view of the fact there are no findings made on this issue I feel the only option is to remit this matter back to the First-tier Tribunal and I remit the matter under Section 12(1) of the Tribunals, Courts and Enforcement Act 2007 to be listed before a Judge other than Judge of the First-tier Tribunal Samimi.

### **Notice of Decision**

There is an error in law. I set aside the original decision and I remit the matter back to the First-tier Tribunal under Section 12 of the Tribunals, Courts and Enforcement Act 2007.

No anonymity direction is made.

Signed

Date 08/02/2019



Deputy Upper Tribunal Judge Alis