



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

Appeal Number: HU/17572/2016

**THE IMMIGRATION ACTS**

**Heard at Birmingham CJC  
On 6 March 2019**

**Decision & Reasons Promulgated  
On 27 March 2019**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE CHAPMAN**

**Between**

**ENTRY CLEARANCE OFFICER - UKVS SHEFFIELD**

Appellant

**and**

**AISHA GHAFOR  
(ANONYMITY DIRECTION NOT MADE)**

Respondent

**Representation:**

For the Appellant: Ms H Aboni, Home Office Presenting Officer

For the Respondent: Mr J Adebayo, Legal Representative, Syed Lawcare Solicitors

**DECISION AND REASONS**

1. This is an appeal by the Entry Clearance Officer against a decision of Designated Judge of the First-tier Tribunal McCarthy promulgated on 28 September 2017.
2. The Respondent, to whom I shall refer as the Claimant, is a national of Pakistan born on 9 April 1983. She sought entry clearance as the partner of a British citizen, which application was refused on 27 June 2016, on the basis that the evidence failed to show that the claimant has a genuine and

subsisting relationship with the Sponsor. It was conceded that all the other requirements of Appendix FM of the Rules were met.

3. The Claimant appealed against that decision. Her appeal came before Designated Judge McCarthy for hearing on 15 September 2017. In a Decision and Reasons promulgated on 28 September 2017 the judge allowed the appeal.
4. Permission to appeal was sought in time by the Entry Clearance Officer on the basis that the judge had erred materially in law:-
  - (1) in failing to take into account and/or resolve conflicts of fact or opinion on material matters. The basis of this assertion is the fact there was a lack of documentary evidence to support the judge's findings which were based on the assessment of the credibility of the Sponsor's evidence; and that
  - (2) the judge had failed to give adequate reasons for his decision, in particular why it would be unreasonable for the Sponsor to relocate to Pakistan to join his wife.
5. Permission to appeal was granted by Designated Judge Woodcraft on the basis that:-

*"It is arguably unclear to the losing party, in this case the Respondent, why in the absence of entry clearance which could otherwise be easily obtained the Designated Judge has allowed the appeal."*

#### *Hearing*

6. At the hearing before the Upper Tribunal, Ms Aboni for the Entry Clearance Officer sought to rely on the grounds of appeal. She submitted that the issue before the First-tier Tribunal was whether there was a genuine and subsisting relationship and that the First-tier Tribunal Judge had erred in allowing the appeal, finding that there was a genuine relationship but failing to give adequate reasons for his findings in light of the fact that there was no supporting evidence. The judge accepted the evidence of the Sponsor, however there was a lack of supporting evidence which she submitted could easily have been obtained. Ms Aboni submitted there were no reasons for the conclusion that the Claimant meets the requirements of Appendix FM.
7. Ms Aboni sought to rely on the fact that the Sponsor had not visited the Claimant since 2014. His explanation was that his employer was not willing to give him more than a week's leave, however this was not sufficient and there was no explanation from the employer but just confirmation of the Sponsor's employment.
8. Ms Aboni submitted that there was no supporting evidence of devotion between the couple, particularly in light of the absence of evidence as to face-to-face contact. At [13] there was evidence of telephone calls,

however she submitted that these could not be linked except through the Sponsor's own statement as to the Claimant's phone number. She submitted ultimately that the judge had erred in accepting the Sponsor's evidence, absent anything to back it up, and thus the decision was flawed.

9. In his submissions, Mr Adebayo submitted that the Claimant had met all the requirements for entry clearance, that there was a substantial examination of the Sponsor in court who was able to shed light on the evidence, including the evidence of telephone contact. He submitted it would be implausible for the Sponsor to make so many calls to someone who is not his wife. The Sponsor felt to blame for the delay in bringing his wife to the UK and so travelled to Pakistan to visit her, as a consequence of which he lost his job. It was pointed out to Mr Adebayo that this was, however, post decision evidence and not material to the question of whether or not the judge made a material error.
10. I reserved my decision which I now give with my reasons.
11. The Sponsor attended the hearing of the appeal, adopted his witness statement and gave further evidence. At [6] the Judge found: "*He demonstrated a good, up to date knowledge about his wife.*" At [12] the Judge had regard to the decision by the former President of the Upper Tribunal, Mr Justice Blake, in *Goudey* (subsisting marriage - evidence) Sudan [2012] UKUT 41, which held *inter alia*:

*"10. In our judgement the judge has mis-directed himself as to the weight to be attached to the total documentation relating to the telephone calls. Whilst it is true that this documentation does not of itself prove that the sponsor has been speaking to his wife as opposed to someone else in the Sudan, the material gives corroborative support for the wife's account in the entry clearance application and the appellant's testimony in the appeal. It is clear that a great many telephone calls have been made using the telephone cards during the period of the relationship. This is substantial support for the proposition that they conducted their relationship by telephone. It is improbable that all this communication was with someone else rather than the person who the sponsor has married and wants to bring to the United Kingdom ...*

*11. Everything else is neutral in this case. There is no evidence of lies, poor immigration history or deception. There is some evidence of financial sponsorship though the judge was entitled to be unimpressed by it for the reason he gave the absence of receipts is not a factor that goes to the discredit of the application.*

*12. Accordingly we find that there has been an error of law in the assessment of this case and whether the requirements of the Immigration Rules had been met. It may be that the ECO and the judge considered that the requirement to show a "subsisting*

*marriage" imposes some significant burden to produce evidence other than that showing that there was a genuine intention to live together as man and wife in a married relationship. If so we conclude that that is an error of law. The authority of GA ("Subsisting" marriage) Ghana \* [2006] UKAIT 00046; [2006] Imm AR 543 only requires that there is a real relationship as opposed to the merely formal one of a marriage which has not been terminated. Where there is a legally recognised marriage and the parties who are living apart both want to be together and live together as husband and wife, we cannot see that more is required to demonstrate that the marriage is subsisting and thus qualifies under the Immigration Rules."*

12. Judge McCarthy then went on to find as follows:

*"14. The question for me, therefore, is can I believe what the sponsor has stated? I find that I am satisfied it is more likely than not that he has given a truthful and accurate account. I reach this conclusion for the following reasons. First, the sponsor has attempted to provide supporting evidence from his employer and the phone company. This is not a case where there is no supporting evidence. What documentary evidence exists is consistent with what the sponsor has stated. Second, some of the phone records identify the sponsor as the caller. The pattern of calls in those records mirrors the call pattern in the other records. This makes it more likely than not that the calls were made by the same person. Third, the sponsor was very candid in his answers. He did not deny the problems with his evidence once the problems were pointed out. He did not seek to embellish his account or to change his explanations. He was consistent even when faced with challenging cross-examination. These are signifiers of a person telling the truth.*

*15. I find that I can believe the sponsor's evidence. I find it more likely than not that he is in a genuine and subsisting relationship as claimed. It follows that I find the couple enjoy family life together and the decision to refuse entry clearance interferes in their right to enjoy their family life."*

*16. The same finding means the appellant in fact meets the requirements of appendix FM as a spouse. All other requirements were conceded as having been met. My finding satisfies the only issue in dispute."*

13. It is apparent from the Judge's findings set out above, that his reasoning in respect of the evidence before him was clear and detailed. I find that the Judge gave adequate and sustainable reasons for his finding that the Sponsor's evidence was credible and that, applying the requisite standard of proof, that there is a genuine and subsisting relationship between the Appellant and the Sponsor. Contrary to the assertion in the grounds of appeal, there was some supporting documentary evidence and the Judge

was entitled to attach weight to it, given that it was supported by the Sponsor's evidence.

14. I find that the grounds of appeal are essentially a disagreement with the findings of the Judge, which were entirely open to him on the evidence.

**Notice of Decision**

I find no error of law in the decision of Designated Judge McCarthy. The appeal by the Entry Clearance Officer - UKVS Sheffield, is dismissed, with the effect that the Judge's decision to allow the appeal on human rights grounds (article 8) is upheld.

No anonymity direction is made.

Signed Rebecca Chapman

Date 21 March 2019

Deputy Upper Tribunal Judge Chapman