



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

Appeal Number: HU/24522/2018

THE IMMIGRATION ACTS

**Heard at: Field House
On: 12 February 2020**

**Decision & Reasons Promulgated
On: 3 March 2020**

Before

UPPER TRIBUNAL JUDGE KEBEDE

Between

KABIR AHMED

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr P Georget, instructed by Stirling Ackroyd Solicitors
For the Respondent: Ms J Isherwood, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Bangladesh, born on 20 August 1992. He has been given permission to appeal against the decision of the First-tier Tribunal dismissing his appeal against the respondent's decision to refuse his application for entry clearance.

2. The appellant applied on 4 May 2018 for entry clearance to settle in the UK as the spouse of a British national. The respondent refused the application on 20 November 2018. The respondent considered that the appellant did not meet the eligibility requirements of paragraphs E-ECP.2.1 to 2.10 of Appendix FM as it was not accepted that his relationship with his sponsor was genuine

and subsisting or that they intended to live together permanently in the UK, given the limited and inadequate evidence of contact. The respondent noted that the appellant had failed to attend his pre-arranged interview on 10 September 2018 and therefore it had not been possible to put any concerns to him. The respondent also refused the application on the basis that the eligibility financial requirements in paragraphs E-ECP.3.1 to 3.4 were not met.

3. The appellant appealed that decision and his appeal was heard by First-tier Tribunal Judge Wilding on 20 August 2019. The judge heard from the sponsor and her daughter and noted that the issue of maintenance and accommodation was not being pursued by the respondent. The appellant produced a large bundle of whatsapp messages at the hearing and his representative, Mr Georget, gave a sample of them to the judge. The judge noted that the evidence from the sponsor was that she and the appellant had met online in 2012 but the relationship had not become romantic until January 2018, and they married in February 2018. The sponsor had not been back to Bangladesh to visit the appellant since then. The judge noted that, in addition to not attending the marriage interview, the appellant had also not produced a witness statement for the appeal. In light of the limited evidence the judge was not satisfied, on balance, that the appellant and his wife were in a genuine and subsisting relationship.

4. Permission to appeal to the Upper Tribunal was sought by the appellant on the following grounds: Firstly, that the judge had erred in his approach to the witness evidence of the sponsor and her daughter and failed to give adequate reasons for rejecting or placing very limited weight on their evidence, particularly given that there had never been any suggestion that the marriage was a sham. The judge had failed to address the sponsor's explanation as to why the appellant had not attended his marriage interview. Secondly, that the judge had erred in his approach to the substantial evidence of contact between the couple over a period of 15 months up to the date of the hearing, namely the whatsapp messages.

5. Permission was granted on 17 December 2019 in the First-tier Tribunal.

Appeal Hearing

6. At the hearing it was accepted by all parties that the only issue before the judge had been whether the appellant's marriage was genuine and subsisting, as the financial/ maintenance concerns were not pursued by the respondent.

7. Mr Georget expanded upon the two grounds of appeal. With regard to the first ground, he submitted that the judge had said that this was not an easy case to determine and also that the sponsor's evidence went in the appellant's favour, but he made no findings on credibility applying the basic principles and it was difficult to tell whether or not he accepted the sponsor's evidence and that of her daughter. If it was inferred that the judge accepted the witness's credibility, then in order to find the relationship was not genuine he would have had to conclude that the appellant had deceived everyone including his wife. Alternatively, he must have found that she was lying, in a ploy to get a visa for the appellant, yet there was no allegation of a sham marriage. The fact that the

appellant did not produce a statement was irrelevant as he had made the application and had married the sponsor. The evidence of the sponsor, who was a party to the marriage, was sufficient. The judge had failed to consider the sponsor's evidence explaining why the appellant did not attend the interview, namely that she had told him that he would be interviewed by telephone and therefore he was waiting for a telephone call. That undermined his finding at [15] that it was a "weighty failure". With regard to the second ground, Mr Georget submitted that the judge had not given sufficient weight to the evidence before him, which included the whatsapp messages, and which was sufficient to meet the burden of proof.

8. Ms Isherwood submitted that the basic principle was that the burden of proof was upon the appellant and he had not produced any evidence from himself. The witness statements from the sponsor and her daughter did not address the genuine nature of the relationship and the whatsapp messages all post-dated the entry clearance decision. The judge was entitled to take account of the absence of a witness statement from the appellant and to reject the explanation given for his failure to attend the interview. It was open to him to conclude that the evidence did not show that there was a genuine and subsisting relationship.

9. Mr Georget, in response, reiterated the points previously made.

Consideration and findings

10. Mr Georget made much of the fact that the respondent had not found the appellant's marriage to be a sham marriage or a marriage of convenience and appeared to be suggesting that that in itself carried considerable weight. I do not consider there to be any merit in such a suggestion. Not only is that the terminology associated with the EEA Regulations rather than the immigration rules, but there can be no doubt that the respondent did not believe that the marriage, and the appellant's intentions in relation to the marriage, were genuine.

11. It appeared, furthermore, to be Mr Georget's suggestion that, in the absence of a specific finding by the judge that the sponsor and her daughter were lying or that the appellant was seeking to deceive them as well as the respondent, the judge ought to have accepted the marriage as genuine. I find no merit in such a suggestion. Neither do I find any merit in Mr Georget's assertion that the judge made no clear findings on the credibility of the witnesses, when it was plain from his findings that he had considerable concerns about their reliability. Mr Georget relied on the judge's comment that the case was not an easy one to determine and his finding that the sponsor's evidence "*was not inconsistent in any part*" (at [10]), as well as his comment at [16] that "*going in the appellant's favour is the evidence of his wife, who...did give some detail behind how the relationship has developed*". However, that was clearly qualified by his adverse findings in the same paragraphs and there can be no doubt from his findings overall that he had considerable doubts about the reliability of the witnesses and was unable to accord their evidence any significant weight.


12. Having plainly found that the witnesses' evidence itself was of limited weight, the judge considered the rest of the evidence before him. He was concerned by the absence of any evidence from the appellant himself. Mr Georget submitted that that was not a proper basis to doubt the genuineness of the marriage and that a statement from the appellant would carry little weight in any event given that he was not present to be cross-examined on it. I disagree. As the judge properly found at [13] and [14], this was the appellant's case, the burden of proof was upon him and the fact that he had provided no personal evidence in support of his application was a material consideration. Likewise, the appellant's failure to attend his interview was a weighty matter and the judge was fully and properly entitled to consider that to be significant and material. Mr Georget submitted that the sponsor had provided a proper explanation for that in her evidence which the judge had failed to consider, but that is plainly not the case. The judge considered the sponsor's evidence at [15] and clearly did not accept the explanation for the appellant's absence. Having myself considered the reasons given by the sponsor, namely that she mistakenly told her husband that the interview would be by telephone, it seems to me that the judge was fully entitled to reject that explanation.

13. Aside from his concerns about the reliability of the witnesses' evidence and the absence of any personal evidence from the appellant, the judge provided further reasons for having doubts as to the genuineness of the marriage. At [10] he noted the lack of persuasive evidence of how the relationship started and developed; at [11] he noted that the sponsor had not been back to Bangladesh to visit the appellant since their marriage in February 2018, which I observe was a year and a half prior to the hearing and nine months prior to the refusal decision; and at [17] he noted the absence of any evidence of communication and contact prior to the marriage or evidence of a developing relationship. Whilst Mr Georget submitted that the voluminous whatsapp messages provided substantial evidence of the relationship, the judge, having plainly fully considered that evidence, was entitled to accord it little weight for the reasons given at [12]. Further, as Ms Isherwood submitted, that evidence post-dated the refusal of entry clearance, a further matter undermining its weight. The absence of supporting evidence was a matter highlighted by the respondent in refusing the appellant's application and the appellant was therefore fully aware of the issues which had to be addressed. The absence of any further persuasive evidence was accordingly a matter the judge was entitled to take into account and from which he was entitled to draw the adverse conclusions that he did.

14. For all of these reasons I find no merit in the appellant's grounds of challenge. The judge's decision took account of all the evidence, he accorded appropriate weight to the evidence that was available and was entitled to draw the adverse conclusions that he did from the evidence which was not available. His decision was fully and cogently reasoned and was entirely and properly open to him on the evidence before him. There are no errors of law in the judge's decision. I uphold his decision.

DECISION

15. The making of the decision of the First-tier Tribunal did not involve an error on a point of law. I do not set aside the decision. The decision to dismiss the appeal stands.

Signed 
Upper Tribunal Judge Kebede
2020

Dated: 17 February