



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

Appeal Number: UI-2022-000580
HU/51209/2021; IA/05368/2021

THE IMMIGRATION ACTS

**Heard at Field House
on 1 September 2022**

**Decision & Reasons Promulgated
on 6 October 2022**

Before

UPPER TRIBUNAL JUDGE CANAVAN

Between

ENTRY CLEARANCE OFFICER

Appellant

and

SANKAVI MANOHAR

Respondent

Representation:

For the appellant: Mr T. Melvin, Senior Home Office Presenting Officer

For the respondent: Ms A. Walker, instructed by York Solicitors

DECISION AND REASONS

1. For the sake of continuity I shall refer to the parties as they were before the First-tier Tribunal although technically the Entry Clearance Officer (represented by the Secretary of State) is the appellant in the appeal before the Upper Tribunal.
2. The appellant (Ms Manohar) is a citizen of Sri Lanka who applied for entry clearance as the fiancée of a person who is present and settled in the UK.

The UK sponsor is a refugee from Sri Lanka i.e. it is recognised that he has a well-founded fear of persecution if he returned there.

3. The respondent (ECO) refused the application in a decision dated 17 March 2021 on the grounds that (i) the couple had not 'met in person' as required by paragraph E.ECP.2.5 of Appendix FM of the immigration rules; and (ii) the appellant did not meet the financial requirements.
4. First-tier Tribunal Judge G. Davison ('the judge') allowed the appeal in a decision promulgated on 20 October 2021. By the time the case came before the First-tier Tribunal the only issue in dispute was whether the couple had 'met in person' within the meaning of the immigration rules. Judge Davison accepted that the couple were in a genuine and subsisting relationship. In accordance with cultural traditions, the proposed marriage was arranged by their families. The couple had been unable to travel to meet one another because the sponsor was a refugee and due to the unusual circumstances arising from the pandemic. Their relationship developed online through video calls.
5. The judge considered the plain wording of paragraph E-ECP.2.5 and the policy guidance that accompanied the rules. Although the judge quoted from the guidance, he did not cite it. Mr Melvin was only able to tell me the title of the guidance, but not the relevant version at the date of the First-tier Tribunal hearing. The respondent should be able to assist the Upper Tribunal with such matters. Previous versions of Home Office policy guidance can be found on the National Archives government web archive. At the date of the First-tier Tribunal hearing the guidance was 'Family Life (as a partner or parent) and exceptional circumstances' (Version 15.0) (11 October 2021). The judge concluded that he should give a broad and purposive interpretation to the requirement of the rule given the circumstances arising from the pandemic. He was satisfied that the couple had 'made the acquaintance of each other' within the broad meaning of the policy guidance.
6. In the alternative, the judge found that refusal of entry clearance solely on this ground would amount to a disproportionate interference with their right to family life that would give rise to unjustifiably harsh consequences. The sponsor was a refugee who could not travel to Sri Lanka. It would not be proportionate to expect them to travel to a third country merely in order to satisfy this single requirement in circumstances where he was satisfied that they were in a genuine relationship. He noted that there may be obstacles to do so during the pandemic including 'quarantine issues, further lock downs, flight restrictions etc.' He considered that it might also affect the sponsor's employment and residential status in the UK.
7. The respondent applied for permission to appeal to the Upper Tribunal on the following grounds, which I will quote in full to illustrate the limited scope of the arguments put forward:

'Ground one: Perverse findings to the degree they are irrational

1. At [14] the FTT] notes that it is not disputed that the appellant and sponsor have not met in person. The rules and guidance on this point are clear, 'in person' is to be understood in its plain meaning, however the FTT] finds at [17] that meeting online amounts to having met in person. This is clearly not within the plain meaning or the spirit of the immigration rules.
2. At [16] the FTT] refers to 'another ECO appeal' which has been granted on the same basis. The FTT] states that the details of this appeal are within an addendum bundle, however there are not further particulars of that appeal, nor any indication that [it] is a reported case or any other reason that it has set a legal precedent such that should have a bearing on this case.

Ground two: Failing to give adequate reasons for findings on a material matter

3. At [19] the FTT] also finds that the refusal decision results in unjustifiably harsh consequences on the basis that that (sic) the appellant's and sponsor's marriage has been postponed twice, with respect, this is not an usual (sic) circumstances in the current pandemic. Beyond the fact that the couple have been unable to get married there is no indication that they have suffered anything approaching what could be described as unjustifiably harsh consequences. The FTT] has failed to consider that the appellant and sponsor have and have (sic) the option to travel to a third country in order to meet in person in order to meet the requirements of the immigration rules.'
8. The Upper Tribunal granted permission to appeal and made directions for the case to be prepared for a panel hearing in order to consider the interpretation of paragraph E-ECP.2.5 of Appendix FM. On the day, the case came before a single judge, but the case was listed for a whole day anticipating detailed legal argument. In the end, the written argument filed by the Secretary of State on behalf of the ECO was only two pages long. The argument relating to the interpretation of the immigration rules was confined to the following trite and simplistic point:

'Ground 1

E-ECP.2.5. requires that the applicant and their partner must have met in person. The Secretary of State relies on what is said at para 10 in **Ahmed Mahad (previously referred to as AM) (Ethiopia) (Appellant) v Entry Clearance Officer (Respondent) [2009] UKSC 16**

...the Rules are not to be construed with all the strictness applicable to the construction of a statute or a statutory instrument but, instead, sensibly according to the natural and ordinary meaning of the words used, recognising that they are statements of the Secretary of State's administrative policy.

The Cambridge Dictionary (sic) online defines "in person" as the following [IN PERSON meaning, definition in Cambridge English Dictionary](#)

"by meeting with someone rather than talking on the phone, e-mailing, or writing to the person"

It is considered that the interpretation of the judge at para 17, that video calls meet the requirement of E-ECP.2.5. is simply not open to them on the basis of “natural and ordinary meaning of the words” and is perverse.’

9. By correspondence dated 23 August 2022 Ms Manohar’s representative filed and served a bundle for the hearing, which included an application made under rule 15(2A) of The Tribunal Procedure (Upper Tribunal) Rules 2008 to adduce further evidence should the decision be remade. The evidence included a copy of a marriage certificate showing that the couple married in the Seychelles on 28 January 2022. This was supported by witness statements, copies of both of their passports showing entry stamps to the Seychelles, and print outs of flight bookings for the appellant and the sponsor (travelling from Sri Lanka to the Seychelles and London to the Seychelles respectively). The bundle also included photographs of the couple together in the Seychelles and with other family members when they spent time together in India on another trip in June 2022.
10. In the circumstances, a pragmatic approach was required to dispose of the appeal in a way that did not use a disproportionate amount of court time. Despite being asked on several occasions during the course of the hearing to assist the Upper Tribunal, Mr Melvin refused to express a view as to whether the evidence now showed that the couple had ‘met in person’ within the meaning argued by the Secretary of State.

Decision and reasons

11. It is not a proportionate use of court time to give guidance on the meaning of the term or to consider whether developments in technology could now mean that getting to know a person through online video calling is sufficient to meet the requirement of paragraph E-ECP.2.5 of Appendix FM. Beyond a bare assertion about the plain meaning of the term there was no analysis of the history of the provision or any evidence relating to the public policy consideration that it is intended to address. The policy guidance refers to a previous decision of the ‘Tribunal’ but does not cite it. No detailed arguments of the kind required by the Upper Tribunal to determine such an issue have been made.
12. In any event, I am satisfied that the evidence produced by the appellant shows on the balance of probabilities that the couple have now ‘met in person’ even within the meaning of the rules contended by the Secretary of State. Whether the judge made an error of law in his interpretation of the immigration rules is immaterial. Court time should not be expended in determining the issue. Even if an error of law was found the appeal would be remade and allowed based on the current evidence.
13. The second ground is factually inaccurate in asserting that the judge failed to consider whether the appellant and the sponsor could travel to a third country when his reasoning at [19] of the decision was centred on the proportionality of this course of action. The judge found that the couple

were in a genuine relationship and had established more than a passing acquaintance through direct contact with one another online. In the circumstances, it was within a range of reasonable responses to the evidence for the judge to conclude that it would be disproportionate under Article 8 to expect the couple to travel to a third country to comply with a minor technicality when the sponsor cannot travel to their country of origin and travel to other countries might have been difficult during the pandemic. The second ground amounts to nothing more than a disagreement with the decision: see *Joseph (permission to appeal requirements)* [2022] UKUT 00218.

14. It is reasonable to infer that the couple eventually had to travel to a third country to get married because of the ongoing proceedings before the Upper Tribunal. Having been put to that trouble, it is obvious that the appellant now meets the requirements of the immigration rules. Whether the First-tier Tribunal decision is set aside or not the underlying appeal against the Entry Clearance Officer's decision would be allowed.
15. For the reasons given above, I find that the First-tier Tribunal decision did not involve the making of an error of law that would have made any material difference to the outcome of the appeal. The decision shall stand.

DECISION

The First-tier Tribunal decision did not involve the making of a material error of law

Signed M. Canavan Date 01 September 2022
Upper Tribunal Judge Canavan

NOTIFICATION OF APPEAL RIGHTS

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within the **appropriate period** after this decision was **sent** to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent:
2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically)**.
3. Where the person making the application is in detention under the Immigration Acts, **the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically)**.

4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days (10 working days, if the notice of decision is sent electronically)**.

5. A “working day” means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.

6. The date when the decision is “sent” is that appearing on the covering letter or covering email