



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-002603

First-tier Tribunal No: HU/55110/2021

THE IMMIGRATION ACTS

**Decision & Reasons Issued:
On 14 June 2023**

Before

UPPER TRIBUNAL JUDGE JACKSON

Between

**AYESHA IRSHAD
(NO ANONYMITY ORDER MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr R Ahmed of Counsel, instructed by MA Consultants
For the Respondent: Mr T Melvin, Senior Home Office Presenting Officer

Heard at Field House by remote video means on 6 June 2023

DECISION AND REASONS

1. This has been a remote hearing which has not been objected to by the parties. The form of remote hearing was by video, using Teams. There were no technical difficulties for the hearing itself and the papers were all available electronically.
2. The Appellant appeals with permission against the decision of First-tier Tribunal Judge Dilks promulgated on 14 April 2022, in which the Appellant's appeal against the decision to refuse her application for entry clearance as a spouse dated 30 July 2021 was dismissed.
3. The Appellant is a national of Pakistan, born on 5 December 1993, who made an application for entry clearance on 5 February 2021 as the spouse of Mr Ess Parvez (the "Sponsor") under Appendix FM to the Immigration Rules. The Appellant first met the Sponsor on 5 or 7 November 2021, they married on 9 November 2021 and last saw each other on 15 November 2021 when the Sponsor returned to the United Kingdom.

4. The Respondent refused the application the basis that it was not accepted that this was a genuine and subsisting marriage with an intention for both to live together as husband and wife in the United Kingdom. The reason for this was that in interview, the Appellant did not know that the Sponsor had been married before, which it was reasonable to expect her to know. The Respondent thought it likely that someone other than the Appellant filled in the application form, which did include details of the Sponsor's previous marriage. The requirements of the Immigration Rules were not met and there were no exceptional circumstances to warrant a grant of entry clearance outside of them.
5. Judge Dilks dismissed the appeal in a decision promulgated on on 6 April 2022 grounds. In essence, the Judge considered that although there was only one discrepancy in the interview, it was on a key question and it was reasonable to expect the Appellant to know of the Sponsor's previous marriage. The Judge did not accept the Appellant's explanation about the interview, finding that both the question and answer were clearly referreing to the Appellant and the Sponosr. It was also find likely that the application form was not completed by the Appellant personally. The *Whatsapp* evidence submitted was largely untranslated and therefore little weight could be placed on it. Overall, the Judge was not satisfied that this was a genuine and subsisting marriage with the intention to live permanently together in the United Kingdom. On these findings, there was no family life established to engage Article 8 of the European Convention on Human Rights.

The appeal

6. The Appellant appeals on the grounds that the First-tier Tribunal erred in its assessment of the evidence and came to a conclusion which was not rationally open to it. In particular, the Appellant states that the issue in the interview was immaterial to the couple's future intentions; an insufficient basis upon which to infer that there was no intention to permanently live together; ignored voluminous evidence of the relationship; did not logically or rationally lead to a conclusion that the couple had no intention to live together permanently in the United Kingdom and was based on factually incorrect reasoning and speculation.
7. Permission to appeal was granted by First-tier Tribunal Judge Shaerf on 26 May 2022, adding his own further reason for granting permission by referencing the interview in detail and stating, "*the original question as recorded is in fact two questions in one and in that context the reply is inadequate because it fails to expressly address each of the questions. Additionally, of course, the question and reply had to be interpreted.*". This was not a matter raised in the original grounds, but was relied on by Mr Ahmed at the oral hearing in addition to the written grounds.
8. On behalf of the Appellant, Mr Ahmed submitted that in essence the First-tier Tribunal had not considered all of the evidence in the round, had not given adequate reasons for the decision and reached a conclusion that was not rationally open to it on the evidence. There was only a single inconsistency in the marriage interviews, which the Appellant explained by her understanding that the question was only if she was married before and it should have been inferred that she was aware of the Sponsor's prior marriage given that it was referred to in the application form which included a copy of the decree nisi. There was also evidence of money transfers and *Whatsapp* messages, the Sponsor gave evidence and the Sponsor was unable to travel to visit the Appellant after their marriage due to restrictions on travel to Pakistan during the Covid-19 pandemic.

9. On behalf of the Respondent, Mr Melvin relied on his skeleton argument. He submitted that on a proper reading of question 32 to the Appellant in interview, the question was clear, as was the answer which included 'we' and 'our' therefore referring to both the Appellant and the Sponsor. The Appellant was not aware of the Sponsor's previous marriage and the application form referring to that was not completed by her.
10. In any event, Mr Melvin submitted that all of the evidence had been properly considered in the round. The written statements of the Appellant and Sponsor were very brief, containing more submission than evidence and were almost identical. The *Whatsapp* messages had not been translated and therefore little weight could be attached to those. Further, this was a situation in which the Appellant and Sponsor had first met and wed within 7 to 10 days and not seen each other in person since. Overall, the Judge reached a finding that was rationally open to her after considering all of the evidence in the round.

Findings and reasons

11. The grounds of appeal at their core amount to a rationality challenge to the Judge's finding that this is not a genuine and subsisting marriage, with reference to a lack of adequate reasons and a lack of consideration of all of the evidence. I do not find any error of law in the First-tier Tribunal's decision, for the reasons set out below.
12. The decision sets out the history of the Appellant's marriage and contact with the Sponsor and refers to the interview inconsistency as to the Sponsor's previous marriage in paragraph 13. In paragraph 14 of the decision, the Judge sets out the Appellant's response to this, which is rejected, with reasons in paragraph 15, that the question was clear and the nature of the Appellant's answer showed that she understood the question was about both her and the Sponsor, referring to 'we' in her reply. The importance of this is set out in paragraph 16. The finding in paragraph 17 that it was likely the application form was filled in by someone else other than the Appellant is not speculation by the Judge, it is entirely consistent with the 3rd party declaration on the application form itself showing that it was not completed by the Appellant.
13. In paragraph 18 there is reference to the other documentary evidence, with little weight placed on *Whatsapp* messages as they were largely untranslated and the money transfer receipts since January 2021. The conclusion in paragraph 19 refers to having considered all the evidence in the round and the finding that the Appellant had failed to establish that the relationship is genuine and subsisting and that they intend to live together permanently in the United Kingdom.
14. The decision makes express reference to all of the evidence before the First-tier Tribunal and gives clear and cogent reasons for the weight to be attached to it, as well as the overall conclusion. The final conclusion was one which was unarguably rational and open to the Judge on the evidence before her. The grounds of appeal amount to little more than disagreement with the conclusion. The additional point made by the Judge granting permission, which was not made in the grounds of appeal was at best unhelpful in referring to his own thoughts on the evidence rather than identifying an arguable error of law.

Notice of Decision

The making of the decision of the First-tier Tribunal did not involve the making of a material error of law. As such it is not necessary to set aside the decision.

The decision to dismiss the appeal is therefore confirmed.

G Jackson

Judge of the Upper Tribunal
Immigration and Asylum Chamber

6th June 2023