



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

Appeal Numbers: OA/14576/2013

THE IMMIGRATION ACTS

Heard at: Field House

**Determination
Promulgated**

On: 30th September 2014

On 23rd January 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE BRUCE

Between

ENTRY CLEARANCE OFFICER, DHAKA (NEW DELHI)

Appellant

and

FARZANA AHMED SHEWLY

Respondent

Representation:

For the Appellant: Ms Holmes, Senior Home Office Presenting Officer

For the Respondent: Mr Hossain, Chambers of MM Hossein

DETERMINATION AND REASONS

1. The Respondent is a national of Bangladesh date of birth 25th December 1990. On the 13th August 2014 the First-tier Tribunal (Judge R.A Jones) allowed her appeal against refusal to grant her entry clearance as the spouse of a person present and settled in the UK. The Entry Clearance Officer (ECO) now has permission to appeal against that decision.

2. Although a number of issues were raised in the original refusal, these were settled before the First-tier Tribunal appeal. As the HOPO on the day agreed (see paragraph 19 of the determination) the only matter in issue before Judge R.A Jones was whether this was a genuine and subsisting marriage. The ECO had taken the view that it was not, essentially because he perceived there to be a lack of evidence demonstrating 'intervening devotion' between the parties.
3. In a careful and detailed determination Judge Jones sets out the evidence, and the competing submissions made by each party. The Tribunal heard oral evidence from the Sponsor Mr Hannan, which was found to be credible. His evidence was supported by evidence such as phone cards and the fact that he had remained in Bangladesh with his wife for some three months after they were married in March 2012. Having taken all of that evidence into account, and having directed himself to the authorities of Naz (Subsisting Marriage -standard of proof) Pakistan (2012) and Goudey (subsisting marriage -evidence) Sudan (2012) UKUT 00041 (IAC), the Judge allowed the appeal.
4. The ECO now appeals that decision on the ground that the Judge "failed to provide adequate reasons why the appellant and the sponsor are in a genuine and subsisting relationship". Before me Ms Holmes very wisely said no more and relied on the grounds.
5. It is not, contrary to what the ECO appears to be asserted here, an error of law to believe a witness. Unlike the ECO the Judge had the benefit of hearing oral evidence from the Sponsor and he was entitled to find him credible. As the current President of this Tribunal has recently noted in Nixon (permission to appeal: grounds) [2014] UKUT 00368 (IAC) challenges to credibility findings will only succeed if an error of law is identified. In that case the SSHD alleged that the Judge had erred in accepting the evidence of witnesses:

10. The application for permission to appeal in the present case did not satisfy the requirements and standards rehearsed above. It made no attempt to specify the error/s of law said to have been committed by the FtT. It employed the vague language of "erred", without more. This was inadequate and unacceptable. In principle, an error of law may take a number of forms. Inexhaustively, these include a failure to have regard to material evidence; taking into account and being influenced by immaterial evidence; inadequate reasons; unfair procedure; misunderstanding or misconstruction of the law; disregarding a relevant statutory provision; failing to give effect to a binding decision of a superior court; and irrationality. It should not be difficult for those who compile applications for permission to appeal to do so in terms which specify clearly and coherently, with appropriate particulars, the error/s of law said to

contaminate the decision under challenge. Terms such as "erred" or "erred in law" or "was wrong in law" or "misdirected itself in law" are unacceptable unless accompanied by a clear specification of the error/s of law alleged and suitable brief particulars. If the application for permission fails to satisfy this standard and the Judge concerned is unable to identify with confidence the error/s of law asserted, the appropriate course will be a refusal.

...

12. The nebulous terms of the application for permission to appeal in the present case are reflected in the grant of permission. The former had a contagious effect on the latter. The Judge granted permission, firstly, on the ground that the FtT had arguably erred in law in its assessment of the credibility of three particular witnesses: see the second ground of appeal reproduced in [2] above. **It may be observed that it will very rarely be appropriate to grant permission to appeal on this kind of ground. Credibility assessments by first instance fact finding Tribunals will normally be challengeable only on the basis of irrationality (or, as it is sometimes inelegantly termed, perversity): Edwards - v - Bairstow [1956] AC 14.** Judges should be very slow to grant permission on such a ground...."

(my emphasis)

6. This guidance echoes the findings made by the previous President, Blake J, in Goudey: unless there is a particular reason to doubt the signed statements by a husband and wife that they intend to live together, it is likely that such declarations, supported by evidence such as phone cards, will be sufficient to discharge the burden of proof. In the absence of any countervailing evidence there was no need for the Judge to give particular reasons *why* he found this young man to be credible and his evidence to support the signed statement of the Respondent, the phone cards and other evidence.
7. Judge Jones was entitled to find, on the basis of the evidence before him, that the Respondent had discharged the burden of proof. The determination contains no error of law and is upheld.

Decisions

8. The determination of the First-tier Tribunal contains no error of law and it is upheld.
9. In view of the delay caused by this appeal I direct that the ECO is to expedite consideration of this matter and to grant entry clearance as soon as possible.

Deputy Upper Tribunal Judge Bruce
30th September 2014