Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: HU/07463/2019**

THE IMMIGRATION ACTS

Heard at Field House (via Skype)	**Decision & Reasons Promulgated**
On 6 April 2021	**On 28 April 2021**

Before

UPPER TRIBUNAL JUDGE BLUNDELL

Between

TANVEER AKHTAR
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

ENTRY CLEARANCE OFFICER

Respondent

Representation:
For the Appellant: Mr Sharif, of Fountain Solicitors
For the Respondent: Mr Lindsay, Senior Presenting Officer

DECISION AND REASONS

1. The appellant is a Pakistani national who was born on 5 May 1981. She seeks to join her husband, a British citizen who was born on 9 April 1939, in the United Kingdom. On 8 January 2020, her appeal against the ECO's refusal of that application was dismissed by First-tier Tribunal Judge Parkes ("the judge"). On 6 April 2020, the appellant was granted permission to appeal against the judge's decision by First-tier Tribunal Judge Murray.

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Background

2. The appellant and the sponsor married in Rawalpindi on 28 September 2016. She subsequently made an application for entry clearance as a spouse. The application was refused because the ECO did not accept that the marriage was valid or that the relationship was genuine and subsisting.

3. That decision was maintained on review and, on 25 May 2018, an appeal against the refusal was heard by First-tier Tribunal Judge Fox. Having considered the papers and having heard the sponsor give evidence, Judge Fox found that the marriage was not valid and that the relationship was not a genuine or subsisting one. He expressed a number of concerns which led him to those conclusions. The death certificate of the sponsor's first wife was thought to be of little probative value; the appellant had chosen to return to her parents' house before the sponsor left Pakistan; she had provided no witness statement and there was nothing to suggest that she had been actively involved in the decision to marry the sponsor and neither the telephone records nor the money remittance slips showed contact or support passing between appellant and sponsor.

4. A further application was made on 30 October 2018. The ECO checked the death certificate with the Union Council, which confirmed it to be genuine. Interviews with the appellant and the sponsor took place by telephone. The ECO was not satisfied that the marriage was genuine and subsisting. There was little evidence of a genuine relationship. The telephone calls and remittances held little weight. There was no evidence to show why the sponsor had not travelled to see the appellant since they married.

The Appeal to the First-tier Tribunal

5. The appellant appealed for a second time. Her appeal was heard by the judge, sitting at Birmingham on 20 December 2019. He heard oral evidence from the sponsor and submissions from Mr Sharif, for the appellant, and Mr Lawson, the Presenting Officer who represented the respondent at that stage.

6. In his reserved decision, the judge directed himself to take Judge Fox's decision as his starting point: [6] and [12]. For reasons he gave at [12]-[22], he concluded that the evidence did not justify a departure from Judge Fox's findings. At [15], he noted the contents of the appellant's affidavit, in which she stated that the marriage is genuine and subsisting; that she was in regular contact with the sponsor; and that she was maintained by him. At [16]-[17], the judge noted the evidence in relation to the sponsor's medical conditions and his suspected Parkinson's disease. The evidence did not show that the sponsor was unfit to travel in 2017 or 2018 and the absence of a visit was a 'troubling aspect of the case': [18]. The judge also shared Judge Fox's concern that the appellant had returned to her parents'

house before the sponsor returned to the UK: [18]. There was also a discrepancy in the evidence regarding the sponsor's relationship with his family in the UK: [19]. More family support from the sponsor's side 'might have been expected': [20]. At [21], the judge noted that there were a number of supportive affidavits from people who knew the appellant and the sponsor but 'those reflect their views and have to be set against the evidence considered above'. The interviews with the appellant and the sponsor had been taken into account but did not add to the analysis: [21].

The Appeal to the Upper Tribunal

7. In concise grounds of appeal, Mr Sharif advances two complaints. Firstly, that the judge overlooked evidence before him, including remittance slips, telephone records and affidavits, in concluding that the relationship was not genuine and subsisting. Secondly, that the judge had overlooked cultural considerations in attaching weight to the appellant's decision to return to the family home before the sponsor flew back to the UK.

8. In his oral submissions, Mr Sharif asked me to note that there had been 39 Moneygram receipts and many pages of call records before the judge. These had not been considered and [15] of the judge's decision did not represent adequate engagement with this evidence. There was no finding on the affidavit evidence of the family members, which had appeared at pp167-174 of the appellant's bundle. The judge had misunderstood the situation prior to the sponsor's return to the UK; the appellant was upset by his departure but it would not have been safe for her to remain on her own after the sponsor left Pakistan.

9. Mr Lindsay submitted that the judge had understood the interview record perfectly well and had been entitled to attach significance to the appellant's decision to return to the family home before the sponsor's departure. The point was not said to be particularly important in any event. The affidavits had obviously been taken into account. There were clear reasons given by the judge for finding that the relationship was not genuine or subsisting. There was a previous judicial conclusion to that effect and the evidence which had been submitted subsequently was insufficient to justify a contrary conclusion.

10. In response, Mr Sharif submitted that there was intervening devotion and that the judge was obliged to consider the evidence of the same.

11. I reserved my decision.

Analysis

12. As I have already noted, this was the appellant's second attempt to secure entry clearance as the sponsor's wife. They married in 2016 but her first application was refused and her first appeal was dismissed by Judge Fox

on 4 July 2018. She took further advice and submitted a second application. That was also refused, although the previous ground of refusal about the validity of the marriage fell away in light of the confirmation from the Union Council.

13. By the time the appeal came before the judge, it was obviously accepted on all sides that Judge Fox's decision was the Devaseelan [2003] Imm AR 1 starting point but the appellant's case was that there was now cogent evidence justifying a different conclusion. There were affidavits from people in Pakistan who testified to the bona fides of the relationship. There were Moneygram receipts showing that the sponsor had transferred money to the appellant in Pakistan. And there were pages of telephone records, said to show contact between the appellant and the sponsor in Pakistan.

14. Mr Sharif claims that this material – which was at the very forefront of the appellant's case – was overlooked by the judge. In respect of the affidavits from those in Pakistan, his submission is clearly wrong. The judge demonstrably (if briefly) took those affidavits into account at [21] and came to the conclusion that they did not add significantly to the evidence in support of the relationship. Some might not have come to the same conclusion, but that does not establish a legal error on the part of the judge.

15. In respect of the financial remittances and the telephone records, however, there is no direct engagement by the judge with that evidence. There is reference to what the ECO made of the evidence at [7]. There is reference to what Judge Fox had made of similar evidence at [14]. There is reference to the appellant's affidavit, in which she relied on the ongoing financial support and contact, at [15]. At no point in the judge's decision, however, did he engage with the evidence that the sponsor has continued to send money to Pakistan, with the appellant named as the recipient, or that he has continued to make a large number of telephone calls to Pakistan.

16. In respect of the Moneygram receipts in particular, I consider that the judge erred in law in failing to consider or engage with this important evidence. As Mr Sharif noted in his oral submissions, there were many Moneygram receipts before the judge. These receipts were in two batches. The first batch was dated between June 2016 and April 2019 and was in the bundle submitted with the notice of appeal on 17 April 2019. The second batch was at pp26-31 of the appellant's bundle, dated between May and September 2019. The total amount of money remitted was – by my rough calculation – something in order of £16,000.

17. The fact that the sponsor has been remitting such sums to the appellant (who is named as the recipient in the later slips) was clearly a material matter for the FtT to consider. I do not accept either that the judge came to

grips with that evidence or that he gave sufficient reasons for discounting it in his analysis of the relationship which is said to exist between the appellant and the sponsor. This was critical evidence of what was said to be a genuine and subsisting relationship and it was incumbent on the judge to say what he made of it. He did not do so, and his decision cannot stand as a result.

18. The Lebara call records are evidentially less significant, to my mind, given that the appellant is not named as the recipient of the calls. That is not a criticism of anybody, least of all the appellant's solicitors, since that is the nature of the records in question. Nevertheless, the fact remains that this elderly widow, whose children all reside in the United Kingdom, has clearly made a significant number of calls to Pakistan over the relevant period. They might not have been to the appellant but they are certainly said to have been, and it was for the judge to engage with that evidence and to state what he made of it. Again, he failed to do so and his failure in that respect adds to the concern which I have expressed in relation to the money remittance slips.

19. Mr Sharif's final point is also made out. In its final iteration, the complaint was that the judge had failed to bear in mind the country conditions when he (like Judge Fox) had attached significance to the appellant's decision to return to her parents' house before the sponsor departed for the UK. My initial reaction to the point was that it had been open to the judge to be concerned about this but, on reflection, I consider that it was incumbent upon the judge to consider the country conditions before he reached that finding. This was not a protection appeal but the principles explained in cases such as Y v SSHD [2006] EWCA Civ 1223 nevertheless applied to a finding of this nature.

20. As Mr Sharif pointed out before me, the judge seems to have overlooked the danger to which a lone female might be exposed in Pakistan in coming to this finding (SM (lone women - ostracism) Pakistan [2016] UKUT 67 (IAC) refers). It seems to me that much depends on the surrounding circumstances: the distance that the appellant would be required to travel to return to her parents' home, the amount of time between the appellant's return and the sponsor's departure, and so on. None of this was taken into account by the judge, however, who adopted Judge Fox' concern without any further reflection on the point.

21. On any view, there are serious difficulties faced by the appellant in this appeal. On the limited medical evidence before him, the judge was undoubtedly entitled to wonder why the sponsor had not returned to Pakistan since 2016. And it is not a simple matter – even with the benefit of the bank statements which appear in the appellant's bundle - to understand how the sponsor, who is a pensioner, has been able to remit such significant sums to the appellant in Pakistan. Be that as it may, I am

entirely satisfied that the judge erred in law in failing to consider the matters I have set out above and I am not able to say with any degree of certainty that the result would have been the same if the judge's enquiry had been properly holistic.

22. In the circumstances, I will set aside the judge's decision and remit the matter to the FtT for consideration afresh. That is the appropriate course where none of the judge's findings can stand and the matter needs to be revisited de novo.

Notice of Decision

The appeal to the Upper Tribunal is allowed. The decision of the FtT is set aside and the appeal is remitted to the FtT for consideration de novo by a judge other than Judge Parkes.

No anonymity direction is made.

M.J.Blundell

Judge of the Upper Tribunal
Immigration and Asylum Chamber

19 April 2021