



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

Appeal Number: HU/09084/2019

THE IMMIGRATION ACTS

**Heard at Field House
On 6th March 2020**

**Decision & Reasons Promulgated
On 28th April 2020**

Before

UPPER TRIBUNAL JUDGE JACKSON

Between

**INDIRA TUMBAPO
(ANONYMITY DIRECTION NOT MADE)**

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms K McCarthy of Counsel, instructed by Sunrise Solicitors
For the Respondent: Ms A Fijiwala, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant appeals with permission against the decision of First-tier Tribunal Judge Chana promulgated on 27 September 2019, in which the Appellant's appeal against the decision to refuse her human rights claim dated 8 May 2019 was dismissed.
2. The Appellant is a national of Nepal, born on 1 December 1994, who first entered the United Kingdom as a spouse on 13 February 2016 with leave to remain as such to 1 November 2018. Her latest application was on the

basis of a relationship with a different partner with whom she had been cohabiting since September 2018.

3. The Respondent refused the application the basis that the Appellant's relationship was not accepted and in any event did not meet the definition of partner within Appendix FM because the relationship had not involved cohabitation for a sufficient period. In these circumstances paragraph EX.1 of Appendix FM did not assist the Appellant. Further, she did not meet the requirements in paragraph 276ADE of the Immigration Rules and there were no exceptional circumstances to warrant a grant of leave to remain.
4. Judge Chana dismissed the appeal in a decision promulgated on 27 September 2019, primarily on the basis that the Appellant's relationship was not accepted and she could not meet the requirements of the Immigration Rules. In all of the circumstances, there was no breach of Article 8 of the European Convention on Human Rights.

The appeal

5. The Appellant appeals on two grounds, first, that the First-tier Tribunal failed to take into account that between the Respondent's refusal and the date of hearing, the Appellant had married her partner (on 9 August 2019) and therefore met the definition in the Immigration Rules, further there was sufficient evidence of the relationship. Secondly, that the First-tier Tribunal failed to consider the *Chikwamba* point given that there was sufficient evidence to show the requirements of the Immigration Rules would be met.
6. At the oral hearing, Counsel for the Appellant stated that in essence, the appeal was a reasons and rationality challenge to the decision of the First-tier Tribunal. In summary, there was a range of evidence to support the Appellant's claim to be in a genuine relationship with her husband; including the fact of their marriage, photographs, text messages and statements from other attesting to their relationship; however none of this material was expressly taken into account by the First-tier Tribunal who instead focused on what was said to be inconsistencies in the evidence.
7. The first inconsistency was said to be in relation to the Appellant's accommodation, which is a house in multiple occupation with tenants living in separate units without communal areas and therefore not necessarily any significant interaction between tenants. The Appellant and her husband were asked who else was living there and there was no actual inconsistency in their evidence. In paragraph 20 of the decision it is recorded that the Appellant said all rooms were occupied but could not name all of the occupants but in paragraph 21, that there was one empty room. However, the evidence at the oral hearing from both the Appellant and her husband was that all rooms were full.

8. The second inconsistency was said to be in relation to a ring, in circumstances where neither the Appellant nor her husband could remember when it was given. Counsel submitted that there was confusion as in fact the Appellant was given two rings, only one was an engagement ring and the other less important and memorable as to when it was given. Counsel did accept that there was an apparent inconsistency in that the Appellant stated she was given a ring on her birthday and her husband said he did not; then changing her submission to too much weight being placed on this by the First-tier Tribunal.
9. The third inconsistency was said to be about the break down of the Appellant's first marriage. The Appellant stated that this was due to domestic abuse and in oral evidence, her husband stated that this was because the Appellant's first husband was having an affair. This is not necessarily inconsistent and in any event, the Appellant's husband's written evidence referred to domestic abuse.
10. Finally, Counsel submitted that there was an inherent improbability of the Appellant claiming her first marriage had broken down due to domestic violence and a new relationship started if not true given that she was in the United Kingdom on a five year route to settlement. It was however accepted that this did not necessarily follow and it was not the strongest point in the Appellant's claim.
11. As to the second ground of appeal, Counsel submitted that had the relationship been accepted, the principle in *Chikwamba* would have applied and the First-tier Tribunal should have considered the same as there was sufficient evidence to show that the requirements of the Immigration Rules had been met. However, Counsel could not explain the relevance of the principles in *Chikwamba* to the facts of this case given that there was no refusal on the basis of immigration status or requirement to return to make an application for entry clearance. If the relationship had been accepted as genuine, then the First-tier Tribunal had to consider the other requirements of the Immigration Rules for the purposes of the assessment under Article 8(2) of the European Convention on Human Rights in any event.
12. On behalf of the Respondent, Ms Fijiwala submitted that the First-tier Tribunal had properly considered all of the evidence before it and reached conclusions on the genuineness of the Appellant's relationship that were open to it on that evidence.
13. As to the inconsistencies, in relation to accommodation, the evidence was recorded in the decision at paragraphs 15 and 20 (in which there is an obvious typo) and the conclusion in paragraph 21 is correct. It is notable that there was no tenancy agreement and no evidence of any joint bills. The Respondent's record from the Home Office Presenting Officer attending the hearing was further that the Appellant was still living with her ex-husband and one of the occupants had his name, albeit this was

not relied upon by the First-tier Tribunal in the decision. In any event, there were inconsistencies in the evidence about the accommodation.

14. There was an inconsistency in the evidence about the ring which was relevant to the Appellant's credibility and nature of the relationship. The explanation given by Counsel at the hearing before the Upper Tribunal was not before the First-tier Tribunal and does not in any event explain the inconsistency in evidence before the First-tier Tribunal.
15. There was a further inconsistency, as identified by the First-tier Tribunal, between the oral evidence of the Appellant and her husband about the break down of her first marriage; which was again different to Counsel's explanations before the Upper Tribunal. The First-tier Tribunal also noted in relation to credibility that the Appellant continued living with her first husband for eighteen months despite the claim of domestic abuse and despite the fact that she was, for this period, already in a relationship with her current husband.
16. Overall, it was submitted that there were sufficient inconsistencies identified in the evidence for the First-tier Tribunal to reach the findings it did on the genuineness of the relationship. The other evidence referred to, including photographs, untranslated text messages and brief identical statements from others who did not attend the oral hearing; could not have detracted from those conclusions. In any event, the weight to be attached to evidence is a matter for the Judge.

Findings and reasons

17. In the decision under appeal, the First-tier Tribunal set out the evidence before it in paragraphs 4 to 18 of the decision with the findings following in paragraph 20 onwards. In essence, the First-tier Tribunal did not accept that the Appellant was in a genuine and subsisting relationship with her husband due to inconsistencies in their evidence in three key areas; that there was a lack of supporting evidence from friends or family (save for inexplicably identical short statements) and a lack of any other supporting evidence. The latter is indisputable, it was entirely open to the First-tier Tribunal to find that little weight should be attached to the identical statements and to place weight on the lack of supporting evidence from family members. The First-tier Tribunal did not expressly refer to the photographs or messages, but the latter were untranslated and the former provided little support for the relationship in any event.
18. As to the inconsistencies, I find that the First-tier Tribunal were entitled to find the three inconsistencies relied upon in the reasons for the decision. First, in relation to the accommodation, it was said that the Appellant had not given evidence that there was an empty bedroom in the house (i.e. that this was a factual error in paragraph 20/21) and that the evidence was in fact consistent. However, there was no statement from the Appellant, her solicitor or representative at the hearing as to the evidence given and the record of proceedings on the Tribunal file indicates that

when answering a question about how it could be known that the Appellant and her husband share the same room, the Appellant stated that they did, Mr M lived alone, another moved in and she didn't know his name, the owner and "*another bed*"; although in another answer, she said all rooms were occupied. The explanation given by Counsel orally at the hearing in the Upper Tribunal did not accord with any of the answers in the record of proceedings or decision and was entirely unsupported. The Appellant's husband stated that all rooms were occupied but also varied in his evidence as to who lived in the house, including a wife and child of the owner who the Appellant did not mention at all. On its face, the evidence of the Appellant and of the Appellant and her husband was inconsistent as to the occupancy in the property and those who lived there and the findings in paragraphs 20 and 21 of the decision were open to the First-tier Tribunal on the record of evidence available.

19. Aside from the point about whether there was an empty room, there also remains an unchallenged finding of other inconsistencies about the accommodation, as to who lived there. In addition, there was a lack of supporting evidence such as a joint tenancy agreement, evidence of rent or joint bills.
20. Secondly, in relation to the ring (paragraph 22 of the decision), Counsel for the Appellant accepted at the hearing that there was an apparent inconsistency between the Appellant's evidence that she had been given one on her birthday and her husband's evidence that he had not given her one on her birthday. The explanation by Counsel at the hearing about possible confusion about two different rings was entirely unsupported by any written statement and in any event, did not address the accepted inconsistency about whether any ring (engagement or otherwise) was given on a particular special occasion. The finding here was clearly open to the First-tier Tribunal on accepted inconsistent evidence. The weight to be attached to this was entirely a matter for the Judge in the First-tier Tribunal.
21. Thirdly, in relation to the cause of the breakdown of the Appellant's first marriage (paragraph 24 of the decision) there was also an inconsistency in the oral evidence of the Appellant and her husband as to the reason for this; even if the Appellant's husband had also referred to domestic abuse in one of his written statements. Again, Counsel attempted at the oral hearing to offer an explanation on wider facts which was wholly unsupported by any written statement or the evidence before the First-tier Tribunal and in any event, did not address the key discrepancy. This was not a case in which there was two different causes separately identified by different parties, but that there was a different primary cause identified by both which did not overlap. The First-tier Tribunal was entitled to find that this was a discrepancy which undermined the Appellant's credibility as to her relationship.
22. Taking these three inconsistencies against the lack of supporting evidence, it was open to the First-tier Tribunal to find that the Appellant

was not in a genuine and subsisting relationship. The points highlighted by the Appellant in her grounds of appeal amount to a dispute with the findings rather than highlighting any factual error in the recording of the evidence nor any error in findings on inconsistencies which were apparent on the face of the evidence. Counsel for the Appellant at the outset of her oral submissions put this case as in essence a failure to give reasons and a rationality challenge. It falls far below the threshold to establish that the First-tier Tribunal's conclusions were irrational and clear reasons were given for the conclusions. I find no error of law in the First-tier Tribunal's decision on the first ground.

23. The second ground of appeal is wholly irrelevant in circumstances where the Appellant has failed on the first ground of appeal as it cannot establish any material error of law. However, I deal with it for completeness. Although before the First-tier Tribunal the Appellant asserted that she met all of the requirements of the Immigration Rules in Appendix FM for leave to remain at the date of hearing; there was no express reliance on *Chikwamba* nor of any potential application of this case to the facts of the present appeal. There was as such no error of law by the First-tier Tribunal in failing to consider the point, which was not Robinson obvious, in the absence of any reliance being placed on it.
24. The point is in any event misconceived as *Chikwamba* has no obvious relevance to the facts of this case even if the relationship had been accepted as genuine (which it was not) - this is not a case where in substance it was accepted that all of the requirements of the Immigration Rules were met save for the immigration status requirement such that the Appellant was required to return to Nepal to make an entry clearance application from there. To the contrary, the immigration status requirement was met and the question of whether the remaining requirements in Appendix FM were met was relevant to the assessment of Article 8(2) of the European Convention on Human Rights, it being trite that if the requirements are all met, a person will succeed on human rights grounds. There was no need to go any further to rely on *Chikwamba* in these circumstances.

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.

No anonymity direction is made.

Signed
2020



Date: 11th April

Upper Tribunal Judge Jackson

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