

**Upper Tribunal**

**(Immigration and Asylum Chamber) Appeal Number: HU/21324/2016**

**THE IMMIGRATION ACTS**

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| **Heard at Field House** | **Decision & Reasons Promulgated** | |
| **On 30 July 2018** | **On 03 August 2018** | |
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**Before**

**UPPER TRIBUNAL JUDGE CANAVAN**

**Between**

**JAYMAN TAMANG**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the appellant: Mr D. Coleman, instructed by Paul John & Co. Solicitors

For the respondent: Mr I. Jarvis, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant entered the UK on 15 September 2012 with entry clearance as a Tier 4 student, which was valid until 20 January 2014. He was granted further leave to remain as a Tier 4 student, which was valid until 30 April 2016. On 29 April 2016, the day before his leave expired, the appellant applied to vary and extend his leave to remain as a partner under Appendix FM of the immigration rules. He stated that he was in a relationship with a British citizen called Jasmin Lama.

2. The respondent refused the application in a decision dated 25 August 2016. The respondent accepted that the appellant met the ‘Suitability’ requirements of Appendix FM. She did not accept that the appellant met the ‘Eligibility’ requirements of paragraph R-LTRP.1.1(c)(ii) with reference to paragraph E-LTRP.1.7 (genuine and subsisting relationship). The appellant claimed to have been in a relationship with his partner since May 2014 and that they had been living together since March 2016. The appellant married his partner on 11 May 2016. The respondent noted that the appellant had provided little evidence of co-habitation. Given the short length of co-habitation prior to the date of the application, the appellant and his partner were invited for an interview on 08 August 2016. The respondent noted several discrepancies in the evidence given by the appellant and his partner during the interview. There were discrepancies in their evidence as to where the proposal took place, how often his partner communicates with his parents in Nepal, who placed the wedding photographs on social media, how much money they received as gifts for the wedding, when his partner last visited Nepal and when his partner returned to work after the wedding. For these reasons, the respondent did not accept that the relationship was “credible, genuine, or subsisting (sic)”.

3. The respondent went on to refuse the application under paragraph 276ADE(1)(vi) because there was no evidence to show that the appellant would face ‘very significant obstacles’ to integration in Nepal given that he had spent the majority of his life in the country. There were no exceptional circumstances to justify a grant of leave to remain outside the immigration rules.

4. The appellant appealed. First-tier Tribunal Judge M.B. Hussain dismissed the appeal in a decision promulgated on 08 March 2018. The appellant was granted permission to appeal to the Upper Tribunal. Both parties agreed that the decision involved the making of an error of law because the judge failed to consider several pieces of evidence that were material to a proper assessment of the appeal. In a decision promulgated on 12 June 2018, the Upper Tribunal set the decision aside (annexed). The appeal has been listed for a resumed hearing in the Upper Tribunal to remake the decision.

5. The appellant and his wife attended the hearing with two witnesses (i) Mr Deepak Kumar Tamang and (ii) Ms Reena Malik. A Nepali speaking interpreter was available to assist the witnesses, who were largely able to give evidence in English. They were asked a number of questions about the appellant’s relationship with his wife. The details of the proceedings are a matter of record.

6. Having had the opportunity to test the evidence of the witnesses, Mr Jarvis conceded that it would not be appropriate to argue that the relationship was not genuine. He accepted that it was a genuine relationship. Although there were some minor inconsistencies they had been clarified and were explained by nerves or language issues.

7. In light of this concession I indicated that the appeal would be allowed. I note that the respondent initially had concerns about the fact that the appellant began co-habiting with his wife shortly before he made the application to extend his leave to remain. He and his wife were consistent in saying that they did not want to live together until his divorce was confirmed. They began to live with one another at around the same time the divorce was finalised in March 2016, which just happened to be shortly before he needed to apply to extend his leave to remain. The notes of the interview with the Home Office indicate that even the interviewing officer considered it a ‘borderline case’ and accepted that the errors could have been due to a language barrier. Although they have good spoken English, it is not the first language of either the appellant or his wife. The witnesses have explained and clarified some of the discrepancies pointed out in the reasons for refusal letter. The evidence they gave in the Home Office interview was broadly consistent in many other respects. The witnesses who attended the hearing gave their evidence in a natural and unrehearsed manner. Mr Deepak Kumar Tamang and Ms Reena Malik testified to the genuine nature of the relationship. Their evidence was not challenged. The documentary evidence supports their claim to live at the same address. Having had the opportunity of hearing and assessing the witnesses myself I am satisfied that Mr Jarvis’ concession was one that was proper to make on the evidence.

8. I am satisfied on the balance of probabilities that the appellant is in a genuine and subsisting relationship and therefore meets the requirements of paragraph E-LTRP.1.7. of Appendix FM. Appendix FM is said to reflect the respondent’s view of where a fair balance should be struck for the purpose of Article 8 of the European Convention. Given that this was the only issue to be determined, the appeal falls to be allowed.

DECISION

The appeal is ALLOWED on human rights grounds

Signed Date 30 July 2018



Upper Tribunal Judge Canavan

**[ANNEX]**



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| **Heard at Field House** | **Decision Promulgated** |
| **On 11 June 2018** |  |
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**Before**

**UPPER TRIBUNAL JUDGE CANAVAN**

**Between**

**JAYMAN TAMANG**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the appellant: Mr D. Coleman, Counsel instructed by Paul John & Co.

For the respondent: Mr I. Jarvis, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant appealed the respondent’s decision dated 25 August 2016 to refuse a human rights claim as the partner of a British citizen.

2. First-tier Tribunal Judge M.B. Hussain dismissed the appeal in a decision promulgated on 08 March 2018.

**Decision**

3. It is not necessary to set out reasons for finding an error of law in any detail because the parties agreed that the judge failed to make findings in relation to several pieces of evidence that were material to a proper assessment of the appeal.

4. The First-tier Tribunal decision involved the making of an error on a point of law. The decision is set aside. Remaking rather than remitting constitutes the normal approach to determining appeals where an error of law is found, even if some further fact finding is necessary (paragraph 7.3 Practice Statement – 25 September 2012). The parties agreed that it was appropriate to remake the decision in the Upper Tribunal, but were not in a position to proceed with the hearing because at least one witness was not available to give evidence.

**Directions**

5. The parties shall serve any further evidence relied upon **at least 7 days before the next hearing**, permission having been given to adduce further evidence that was not before the First-tier Tribunal under rule 15(2A) of the procedure rules.

DECISION

The First-tier Tribunal decision involved the making of an error on a point of law

The appeal will be listed for a resumed hearing

Signed Date 11 June 2018



Upper Tribunal Judge Canavan