



IAC-AH-CO-V1

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

Appeal Number: OA/05178/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 26 June 2015**

**Decision & Reasons Promulgated
On 8 July 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE MONSON

Between

**MR MUNIR AHMED
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

ENTRY CLEARANCE OFFICER - ISLAMABAD

Respondent

Representation:

For the Appellant: Mr F Bajwa, Solicitor, A Bajwa & Co Solicitors

For the Respondent: Miss A Everett, Specialist Appeals Team

DECISION AND REASONS

1. The appellant appeals to the Upper Tribunal from the decision of the First-tier Tribunal dismissing his appeal against a decision by an Entry Clearance Officer in Islamabad (post reference Islamabad\1737743) on 13 March 2014 to refuse his application for entry clearance as a partner under Appendix FM because he was not satisfied that his relationship with his sponsor was genuine and subsisting or that they intended to live together permanently in the UK. The First-tier Tribunal did not make an anonymity direction, and I do not consider that the appellant should be accorded anonymity for these proceedings in the Upper Tribunal.

The Background

2. In his application form, the appellant said that he had met his sponsor in the United Kingdom on 10 September 2011, and their relationship had begun on 22 January 2013, which is the day that they had got married. They had lived together from 22 January 2013 to 27 February 2013, when he returned to his home country of Pakistan. At the date of marriage, he was aged 33 and his sponsor was aged 44. He indicated that he was an overstayer when they got married, as he said that he had entered the United Kingdom on 30 October 2008 on a family visit, but had remained in the UK until 27 February 2013. The date of his departure was the last date that they had seen each other. They kept in touch through telephone, Skype and email.

The Reasons for Refusal

3. The Entry Clearance Officer observed that in order to demonstrate that there had been a genuine and subsisting relationship since 27 February 2013, the appellant had provided some handwritten greetings cards. He had not provided any evidence, such as a stamped envelope, to demonstrate that these cards were ever sent. It was also noted that the cards did not exhibit any signs of where that would indicate they were posted through the international postage system. He said that he spoke to his sponsor via telephone, Skype and email, but he had not provided any documents to demonstrate this.

The Hearing Before, and the Decision of, the First-tier Tribunal

4. The appellant's appeal came before Judge A W Khan sitting at Richmond Magistrates' Court on 3 March 2015. Both parties were legally represented. The sponsor gave oral evidence, and she produced the originals of telephone records from Lycamobile as evidence of telephonic contact with her husband in Pakistan.
5. She had not been able to visit the appellant in Pakistan because her son suffered from psychiatric problems, which meant that she was not able to go to Pakistan. She confirmed that the appellant had overstayed his visa, but he had eventually returned to Pakistan voluntarily. The parents did not agree to her marrying the appellant. She did not cohabit with the appellant after the wedding. The appellant had returned to Pakistan due to his mother's ill-health. They communicated with each other mainly by telephone. There were no photographs of them together. The cards were sent through friends going to Pakistan as the post was unreliable.
6. In answer to questions from the Tribunal, the sponsor clarified that although she had been married at Ilford Registry Office on 22 January 2013, there was no Islamic wedding thereafter. The witness statement was wrong when she said that they had lived with each other from January to February 2013. The appellant was living at another address. She

believed her marriage was genuine, and she believed that the appellant held the same view.

7. In closing submissions on behalf of the Entry Clearance Officer, Mr Collins submitted there was little evidence of a genuine and subsisting marriage, and the parties to the marriage had never cohabited. There was no witness statement from the appellant and no statement from the person who had introduced the appellant to the sponsor. There were no photographs of the wedding or of them together on any other occasions. Even if the sponsor believed the marriage was genuine, there was no evidence that the appellant believed this.
8. In his subsequent decision, the judge's findings were set out in paragraphs [10] to [12]. He was not satisfied that the appellant was able to show that he was in a genuine and subsisting relationship with the sponsor. There was a complete lack of documentary evidence to prove this other than telephone records. While he accepted that the sponsor had been calling various telephone numbers, including what was claimed to be the appellant's telephone numbers and those of his father and brother, this did not constitute evidence that the marriage was genuine and subsisting. While it might very well be the case that the sponsor believed the marriage was genuine and subsisting from her perspective, there was nothing from the appellant in the form of any such evidence from him. He had not supplied a witness statement and there was no supporting evidence from anyone within the UK.
9. Furthermore, there was a material discrepancy between what the sponsor had said in her witness statement and what she said at the appeal hearing about cohabiting after the wedding. He had noted her explanation in evidence that they had not cohabited after the civil registry office wedding because there was no Islamic wedding. He also took into account that the appellant had overstayed for a period of four years. The judge continued:

“What I do find in the evidence is that the appellant had not produced any credible evidence to show that the relationship between him and his partner is genuine and subsisting and that he intends to live with her together permanently in the UK, notwithstanding the evidence emanating from the sponsor herself and even accepting that it has not been possible for her to visit the appellant in Pakistan because of her son's mental health problems which required her to be with him. The question of whether the marriage is genuine and subsisting and whether there is an intention to live permanently with each other must come from both parties and such evidence is singularly lacking from the appellant.”

The Grant of Permission to Appeal

10. On 21 May 2015 Designated First-tier Tribunal Judge McCarthy granted permission to appeal for the following reasons:

“It is arguable that the judge failed to follow the guidance provided by the Upper Tribunal in **Goudey (subsisting marriage - evidence) Sudan [2012] UKUT 00041 (IAC)** when assessing the evidence provided. It is

arguable that the judge's expectations about the evidence exceeded the relevant standard of proof, being a balance of probabilities. Particularly, the judge failed to encounter the sponsor's evidence that he found credible which included evidence about the appellant's intentions."

The Rule 24 Response

11. On 8 June 2015 Lorna Kenny of the Specialist Appeals Team settled the Rule 24 response on behalf of the Entry Clearance Officer opposing the appeal. She contended that the First-tier Tribunal Judge had directed himself appropriately. He confirmed at paragraph [10] of the decision that he had considered the whole of the evidence in the round, including the documents and the evidence of the sponsor. He had applied the correct standard of proof, and no material error of law was revealed in the judge's finding that the appellant had not discharged the burden upon him.

The Hearing in the Upper Tribunal

12. At the hearing before me, Mr Bajwa developed the arguments raised in the application for permission, and Miss Everett stood by the Rule 24 response.

Discussion

13. At the time when the appellant married the sponsor, he was a long term overstayer and his immigration status was highly precarious. The fact that the parties did not cohabit following the civil marriage is much more consistent with the marriage being one of convenience. It was not a satisfactory explanation that the reason why the parties did not cohabit was because there was not an Islamic wedding after the civil marriage. If the marriage was genuine, and the parties genuinely intended to live together permanently, there was no good reason to delay having an Islamic marriage ceremony, and hence to delay cohabitation as husband and wife. On the evidence, the reason why the appellant returned to Pakistan was not in order to regularise his status by making an application for entry clearance as a spouse, but to see his sick mother.
14. The judge did not draw out the significance of the sponsor's admission that the alleged period of cohabitation referred to in the application (and also in her witness statement) was untrue. He simply referred to it as a material discrepancy. But in doing so, the judge was plainly indicating that he was taking the sponsor's damaging admission into account as part of his reasoning as to why the appellant had not discharged the burden of proof.
15. Mr Bajwa placed great reliance on the fact that the Entry Clearance Officer had only refused the application on a narrow ground, which was the lack of supporting documentary evidence to show intervening devotion. But the Entry Clearance Officer was not aware when deciding the application that the assertion of marital cohabitation prior to the appellant's departure from the UK was an untrue one. If the Entry Clearance Officer had been

aware of it, he would no doubt have relied heavily on it as justifying the refusal. In any event, the judge's task was to assess the evidence in its totality. The judge was not confined to considering the evidence which the Entry Clearance Officer had taken into account.

16. Another thread of Mr Bajwa's error of law challenge was that there had been procedural unfairness and that the judge had not taken into account some photographs that had been sent to him after the hearing. These were apparently photographs taken at the registry office. There were no other photographs of the couple.
17. As I informed the representatives at the hearing, there is no evidence on file of photographs or other documents being received by the First-tier Tribunal after the hearing. But it is not in any event in dispute that the appellant married the sponsor at a registry office. So the judge's alleged failure to take into account photographs of the civil marriage does not translate into a material error of law. It does not in any way impact on his reasoning that the appellant had failed to show, by reference to his subsequent behaviour, that the marriage between him and the sponsor was, at the date of the refusal decision, genuine and subsisting, and that both parties to the marriage genuinely intended to live together permanently as husband and wife.
18. Finally, I do not consider that there was any internal contradiction in the judge accepting that the sponsor had, or might have, an honest belief that her marriage to the appellant was genuine and subsisting, but not accepting that she was right in this belief. As discussed earlier, there was an in-built asymmetry in the relationship, in that the sponsor did not need to marry the appellant in order to continue to enjoy her settled life in the United Kingdom, whereas the appellant very much needed to marry the sponsor (or someone else with settled status and financial means) in order to have any prospect of be able to remain here lawfully, or of being able to obtain entry clearance as a spouse in due course. When the appellant's adverse immigration history is taken into account, together with the damaging admission of the sponsor that there was no cohabitation following the civil marriage, it is abundantly clear that the judge did not apply too high a standard of proof when finding against the appellant.

Decision

The decision of the First-tier Tribunal did not contain an error of law, and accordingly the decision stands. This appeal by the appellant to the Upper Tribunal is dismissed.

No anonymity direction is made.

Signed

Date

Deputy Upper Tribunal Judge Monson