



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: OA/08677/2014

THE IMMIGRATION ACTS

Heard at Bennett House, Stoke
On 16 July 2015

Decisions and Reasons Promulgated
On 14 August 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE GARRATT

Between

MR ABDUL GHAFOOR

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr R Khan, Solicitor of Khirri Solicitors
For the Respondent: Mr A McVeety, Senior Home Office Presenting Officer

DECISION AND DIRECTIONS

Background

1. On 11 June 2015 Judge of the First-tier Tribunal Cruthers gave permission to the appellant to appeal against the decision of Judge of the First-tier Tribunal Narayan in which he dismissed the appeal against the decision of the respondent taken on 8 July 2014 to refuse entry clearance as a partner applying the provisions of Appendix FM of the Immigration Rules. Judge Cruthers granted permission on the basis that it

may have been the Judge erred in some of the ways alleged in the grounds of application by, in particular, failing to consider the appellant's Article 8 rights even if the Judge had concluded that he could follow the findings of an earlier Judge that there was no valid and subsisting marriage.

The application and submissions

2. The grounds of application take issue with the conclusion that there was no valid or subsisting marriage between the parties. In particular it is submitted that the Judge placed too much weight on a typing error in a translated version of the parties' marriage certificate. It is also argued that the Judge did not properly consider "overwhelming evidence" used by the appellant to show that his alleged marriage to Sanghra Sultana did not exist when the appellant had accepted full responsibility for the earlier misrepresentation. It was also argued that the Judge had placed too much reliance upon the earlier determination sent out on 30 June 2010 without considering the relevant evidence of the appellant and sponsor.
3. At the hearing before me Mr Khan indicated that, although his firm had been instructed to represent the appellant at the end of June 2015, he had not seen the appellant's three bundles submitted for the First-tier hearing or the previous determination. He had also sent a letter dated 13 July 2015 to Field House requesting copies of the respondent and appellant bundles although the letter contains no reason for representatives not having those documents. In the circumstances I provided Mr Khan copies of the relevant bundles and the earlier determination. I then adjourned the hearing for half an hour in order for Mr Khan to give consideration to those documents. On resuming the hearing Mr Khan indicated that he was content to make submissions based upon the information he had read.
4. Mr Khan thought that a distinction could be drawn between the findings in the first decision and those of Judge Narayan. In particular the first decision at paragraph 46 referred to the validity and genuineness of the appellant's marriage as the main issues whereas the latest decision made reference to the existence of the marriage. He also thought the Judge had been wrong to rely upon the appellant's "self-declaration" pointing to the appellant misleading the Tribunal when his affidavit of 10th March 2015 acknowledged the misrepresentations made. The Judge should have taken that into consideration. He suggested that, in any event, any earlier marriage by the appellant would not have invalidated the marriage to the sponsor as a polygamous marriage could take place in Pakistan. He conceded that the points he made were not incorporated into the original grounds of application.
5. Mr McVeety objected to any amendment to the grounds. He emphasised that the 2010 decision had not been appealed. Further, the sponsor was a British national so any polygamous marriage by the appellant could not be valid. In any event, as the appellant claimed that he had not been previously married, the issue was not relevant. He thought that the conclusions reached by the Judge about the credibility of the appellant supported by the evidence were not limited to the mis-spelling in the certified copy of the birth certificate but included proper reference to the earlier misrepresentation. It was not, therefore, relevant for the Judge to reach any conclusion on Article 8 issues because he was entitled to find that the marriage was neither valid nor subsisting.

6. In conclusion, Mr Khan conceded that the Judge had taken into consideration the appellant's affidavit in paragraph 36 of the decision.

Conclusions

7. After considering the matter for a few moments I announced that I had concluded that the decision of the First-tier Tribunal does not show a material error on a point of law and shall stand. My reasons for that conclusion follow.
8. It is clear that the Judge was entitled to rely upon the earlier decision of the Tribunal sent out on 30 June 2010 and to reach similar conclusions on the same essential issues put before him. These issues included evidence that the appellant had made reference to another wife in an earlier application to visit the United Kingdom and thus the validity and subsistence of the appellant's claimed marriage to the present sponsor was in issue. The first Judge made the proper finding, open to him, that the appellant had not shown that his marriage to the sponsor was valid and subsisting. That decision was not appealed and Judge Narayan was entitled to make the decision a start point before reaching his own conclusions on the same and similar issues.
9. Judge Narayan was careful to point out (paragraph 30) that he had not only taken into consideration the findings of the previous Judge but considered all the evidence put before him which, the decision shows, was carefully examined and cogent reasons given for the conclusion that the appellant was not a witness of truth in relation to either any past marriage or his present marriage. In reaching these conclusions the Judge was entitled to taken into consideration the inconsistency in the translated copy marriage certificate although it is clear that the inconsistency was only one reason for the Judge reaching negative conclusions. The Judge was entitled to reject the appellant's assertion that his first marriage had never taken place when earlier assertions suggested that it had. The Judge was therefore able to conclude, in line with the earlier decision, that the appellant had not shown his marriage to the sponsor was genuine and valid.
10. Bearing in mind the finding that the marriage was not genuine it was not incumbent upon the Judge to consider Article 8 issues based upon a spousal relationship which had been found not to exist.

Decision

The decision of the First-tier Tribunal does not show a material error on a point of law and shall stand.

Anonymity was not requested nor do I consider it appropriate in this appeal.

Signed

Date

Deputy Upper Tribunal Judge Garratt