



IAC-FH-AR-V1

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

Appeal Numbers: AA/08376/2015
AA/08378/2015

THE IMMIGRATION ACTS

**Heard at Birmingham
On 10 February 2016**

**Decision & Reasons Promulgated
On 17 February 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAMBERLAIN

Between

**IT
SAY
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Mr. A. Alam of Counsel

For the Respondent: Mr. D. Mills, Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal by the Appellants against the decision of First-tier Tribunal Judge Shergill promulgated on 8 October 2015 in which he dismissed the Appellants' appeals against the Respondent's decisions to refuse to grant asylum.
2. I have made an anonymity direction, following that which was made in the First-tier Tribunal.

3. Permission to appeal was granted as follows:

“The grounds argue that the judge adopted a flawed approach in his assessment of credibility. (1) In finding that the couple had fabricated their account to facilitate remaining in the UK, the judge had adopted a higher standard of proof; (2) given that the respondent had accepted that the appellant had entered into a relationship with the 2nd appellant and had a child with her outside marriage, the judge was wrong to reject how the relationship came about; (3) the judge’s finding that the second appellant marriage to her British husband was not genuine and granted her entry clearance to the join him; (4) the judge failed to factor in the accepted and crucial fact that the couple had engaged in an adulterous relationship and that the 2nd appellant had given birth to a child outside of wedlock. These raise arguable errors of law.”

4. At the hearing I heard submissions from both representatives. I reserved my decision which I set out below with my reasons.

Submissions

5. Mr. Alam relied on the grounds of appeal. Further, in relation to the burden of proof, he submitted that looking at the decision as a whole, the judge had found on the lower burden against the Appellants, rather than assessing whether, to the lower standard of proof, their account was true. He had reversed the burden when considering whether their account was reasonably likely to be true. I was referred to paragraph [32], and his use of the words “highly unlikely”. I was also referred to paragraph [43], where he considered their claim to be naive against the evidence that they were technical people.
6. He submitted that due weight had not been placed on the ECO having granted entry clearance to the second Appellant. Contrary to the Rule 24 response, there was more to it than an online application. Entry clearance applications required strong evidence of a genuine and subsisting relationship. Without strong evidence, the application would have been refused.
7. Mr. Mills submitted that there was no merit in the grounds relating to the standard and burden of proof. In paragraph [18] the judge self-directed using the correct standard of proof. He then repeated the standard of proof throughout the decision. I was referred to paragraph [46]. In relation to [32], the fact that the judge referred to “highly unlikely” did not mean that he was applying the incorrect standard of proof.
8. In relation to the ground relating to the verification checks, a full reading of paragraph [45] showed that there were other factors which had led the judge to put no weight on the document, including the fact that some of the document was in Urdu, and that there was an issue with the dates.
9. In relation to the third ground, the judge states in paragraph [34] that he is bound by the Respondent’s concession that they are in a relationship, but what he disputes is how that relationship came about. It is connected

to the rejection of the second Appellant's claim. This was a sustainable finding. Given the credibility findings, he was entitled to find that they were in a relationship, but nothing else.

10. In relation to the second Appellant's previous marriage, the judge found that this was never genuine and subsisting, which was a finding that was open to him. No concession had been made by the Respondent that the marriage was genuine. The fact that entry clearance had been granted could not bind a judge and he was entitled to come to a different view. The second Appellant had never lived with that individual, nor had they co-habited. It was hard to see how the judge could have come to any other conclusion.
11. In relation to ground 5, and the failure to consider in detail the risk on return, the Appellants were two nationals of Pakistan who were unmarried and had a child. According to Pakistan law, such people could be stoned to death. However, there was no evidence that adulterers would be pursued, absent a complaint. The judge found that there was no such issue in paragraph [56]. He found there was no risk from the second Appellant's family. On the judge's findings, nobody would make a complaint against the Appellants. Nobody was looking for them. They could return to Pakistan as a family unit, and could make their relationship formal by marrying.
12. In response Mr. Alam submitted that just because the judge had stated the correct standard of proof did not mean that he had applied it. The essence of the case, that the Appellants had formed a relationship outside of marriage, outside the cultural and religious norms, had been conceded. The judge had focussed on the inconsistent aspects. I was referred to HK [2006] EWCA Civ paragraph [28]. Having found the essence of the claim, their relationship, the judge then finds inconsistency in how the relationship came about, but he questioned what weight should have been applied to this.
13. In relation to relocation, paragraph [56], this was by reference to there being no threat to the Appellants. The issue related to them being in a genuine relationship. The conclusion was drawn on the basis of the judge's finding that there had not been a genuine relationship between the second Appellant and the man she came to the United Kingdom to marry. It was not open to the judge to find, given that entry clearance had been granted, that this was not a genuine relationship.
14. I was referred to the petition document. It was submitted that it was clearly in English, contrary to the assertion in the decision that part of it was in Urdu. There was no reason for the Appellants to get this verified. It was not clear on what basis the judge had found that this had been created after 11 September 2015. It was attested on 11 September 2015. It was difficult to see how the judge had found that this document had been produced after the date on which it stated that the Appellant was to

go to court. It was difficult to see why no weight had been placed on this document whatsoever.

Error of law

Ground 1 - standard of proof

15. In relation to the standard of proof, the judge states in paragraph [18] that the lower standard of proof is the correct standard. It is of course not enough for a judge to state the standard of proof, but he must also have applied that standard of proof. Considering the decision as a whole, I find that the judge uses this standard of proof. He refers to it throughout, for example paragraphs [32], [39], [41], [43], [49] and [59]. I find that there is no evidence that he has applied a higher standard of proof when considering the Appellants' account. In paragraph [54] he refers to the findings of falsity and dishonesty being made on the balance of probabilities, but this is following his finding in paragraph [51] that "when assessing all of the evidence at the lower standard and taking account of the legal principles that both witnesses accounts were highly implausible". In paragraph [53] he states "looking at all of the evidence in the round to the lower standard, I am not satisfied that there is a reasonable degree of likelihood that threats had been made". Arguably he does not need to find in paragraph [54] that the account has been fabricated, as he has already found when assessing all of the evidence that the accounts were highly implausible. There was no need for him to find any further.
16. I find that reading the decision as a whole it is clear that the judge has used the correct standard of proof.

Ground 2 - reversal of burden of proof

17. Paragraph [45] states:

"Turning to the petition document, I note that the original has not been provided and on a faxed copy was sent from Pakistan. Verification checks have not been undertaken and in any event parts of the document remain in Urdu with no translation (the parts which were raised in submission as being somewhat odd given an earlier date to appear has been given than the date of issue). That undermines the weight to be attached from the outset."

18. I have considered this document. It is a photocopy. The judge states that "parts of the document remain in Urdu". Although there is some handwriting in Urdu, the body of the document is typed and is in English. The judge states that it is dated earlier than the date of appearance. The document states that it was verified on oath on 9 September 2015. It also states "appear on 11 September 2015". There is a date of 19 September 2015 written at the top, and while it might not be clear how the judge has ascertained from this that the document was dated after the date on which it indicated for appearance, equally it is not clear from the document to what the date of 19 September 2015 refers.

19. It is of course correct for a judge to pay less weight to a photocopy document, and not to attach weight to a document which is not in English. There is however no obligation on an appellant to have a document verified.
20. However the judge does not reverse the burden of proof and attach no weight to the document simply because it was not verified, as implied in the grounds of appeal. He gives further consideration to the document in paragraph [46] and gives several reasons for attaching no weight to it. He refers to the timing of the production of the document. He also refers to the fact that no explanation was given as for why the proceedings were based in Lahore. He finds there was no obvious reason as to why the first Appellant would have received a copy of this document. He notes that the petition anticipates other processes of the court which would follow but finds that the first Appellant confirmed that no further documentation had been received at the family home. He also refers to the Country Information and Guidance relating to the court system in Pakistan, and the prevalence of fraudulent documents.
21. I find that taking paragraphs [45] and [46] together, the judge gave adequate reasons for not attaching weight to this document. It was not, as submitted in the grounds, simply because no verification checks had been undertaken, and he has not reversed the burden of proof. I find that there is no error of law in the judge's consideration of this document when taken as a whole.

Ground 3 - contradictory findings

22. The judge states in paragraph [34] that he is bound by the concession that both Appellants have entered into a relationship and had a child outside of marriage. What he does not accept is how the relationship developed. He has therefore not made a finding beyond the fact already agreed by the parties. What he has disputed is the way in which the relationship came about, which is relevant to his credibility findings. It is clear that he has accepted that the Appellants have entered into a relationship and have had a child. He has not reviewed this matter, but in making his credibility findings, he has considered the Appellants' account of how their relationship developed, as he was entitled to do.

Ground 4 - perverse finding

23. The judge did not accept that the second Appellant was in a genuine marriage with YY (paragraphs [27] and [53]). Given the judge's findings as to the credibility of the second Appellant and the lack of credibility in her account, I find that it was open to the judge to find that her marriage to YY was not genuine. It is of course right to say that the second Appellant was granted entry clearance to the United Kingdom on the basis of her marriage to YY, and that part of the requirements are that a marriage be genuine and subsisting. However it is clear that the second Appellant never lived with YY and it cannot be said that her marriage was ever

subsisting. Given the judge's rejection of her account, it was open to him to find that the marriage was not genuine either. Just because admission was granted as a spouse does not mean that the judge is bound by this to find that the second Appellant was in a genuine and subsisting relationship, especially given the account of what happened when she arrived in the United Kingdom. Taking the evidence and findings as a whole, this finding is not perverse.

Ground 5 - overlooking material facts

24. It was submitted that in considering the risk on return and relocation the judge had failed to factor in the accepted fact that the couple had engaged in an adulterous relationship and that the second Appellant had given birth to a child outside wedlock. It had been accepted by the Respondent that the Appellants were in a relationship and had a child. It was accepted by the Respondent that the Appellants were not married. It was accepted by Mr. Mills that adulterers could be stoned to death but that there was no evidence that adulterers would be pursued, absent a complaint.
25. In relation to the second Appellant's relationship with YY, the man she came to the United Kingdom to marry, in paragraph [25] the judge states "I have to accept that there was a marriage conducted or purportedly conducted between YY and [the second Appellant] in Pakistan otherwise the spouse visa would not have been granted by the respondent".
26. The judge turns to consider the divorce between the second Appellant and YY in paragraphs [42] and [43]. He states "She may well be married to YY" [42]. However, the judge states that he does not accept the account as put forward by the Appellants in relation to the steps taken into to obtain a divorce from YY [43]. He states: "In the alternative, I am satisfied at the lower standard that the appellants have maintained themselves in this predicament without pursuing any steps relating to the divorce in order to facilitate the asylum application."
27. There was no evidence that the family of YY had any interest in the Appellants. The judge took into account all of the evidence of the second Appellant's behaviour and that of her family in relation to the marriage to YY, but did not find it credible. The judge found that there would be no risk to the Appellants from the family of the claimed bride of the first Appellant as he found that this woman did not exist, [56]. The judge made findings and gave reasons as to why he could place no weight on the petition document provided.
28. The judge found that there was no threat to the Appellants [56]. He found that there was no reason why they would come to the attention of the authorities or the general public. He found in paragraph [58] that they would pass off as a "normal" married couple and family unit. He found

that this was "regardless of whether [the second appellant] and YY are still not divorced or [the Appellants] remain unmarried". He states in paragraph [58]:

"There is nothing that I have seen or heard (and in light of my findings) that would lead me to conclude the lower standard that there was any risk on return."

He also considered that they could relocate in accordance with the Respondent's assessment.

29. I find that the judge did not overlook material facts. He did not find the Appellants to be credible and gave detailed reasons for his findings. He considered that there would be no threat to the Appellants on return to Pakistan from their position as an unmarried couple. There is no error of law in his consideration of risk on return and relocation.

Notice of Decision

The decision does not involve the making of an error of law and I not set it aside.

The decision of the First-tier Tribunal stands.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the Appellants are granted anonymity. No report of these proceedings shall directly or indirectly identify them or any member of their families. This direction applies both to the Appellants and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date 12 February 2016

Deputy Upper Tribunal Judge Chamberlain