



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/29682/2015

THE IMMIGRATION ACTS

Heard at Field House
On 25th October 2017

Decision & Reasons Promulgated
On 06th November 2017

Before

DEPUTY UPPER TRIBUNAL JUDGE ROBERTS

Between

MR HARISHBHAI MANILAL GAJJAR
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms A Jones, Counsel

For the Respondent: Mr Nath, Senior Presenting Officer

DECISION AND REASONS

1. The Appellant, a citizen of India born 13th February 1968, appeals with permission to the Upper Tribunal against the decision of a First-tier Tribunal (Judge Majid) dismissing his appeal against the Respondent's decision of 13th August 2015 refusing him leave to remain in the UK as the spouse of his Sponsor, Monika Varma.
2. The Appellant's case is that he entered the UK on 3rd August 2012 in possession of a business visa valid until 16th July 2014. Four months after entry, in December 2012, he married Monika Varma, a British citizen. There are no children of the marriage.

3. Once the Appellant's visa expired, he remained in the UK as an overstayer and only applied for leave to remain on 11th June 2015.
4. The Respondent refused the application on the basis that firstly she was not satisfied that the marriage between the Appellant and his Sponsor was a genuine and subsisting one, and secondly that there would be no interference with the Appellant's family/private life engendered by a decision to refuse the application.
5. The Appellant appealed the Respondent's refusal under Section 82 of the Nationality, Asylum and Immigration Act 2002 and the appeal hearing came before Judge Majid. In a decision promulgated on 20th September 2016, he dismissed the appeal.
6. The Appellant sought permission to appeal Judge Majid's decision to this Tribunal on two grounds:
 - there was insufficient reasoning and analysis in relation to the credibility finding concerning the Appellant; and
 - there was insufficient analysis and reasoning concerning the application of the Immigration Rules to the factual content of the case.
7. Permission having been granted, the matter comes before me to decide whether the decision of Judge Majid contains such error of law that it must be set aside and remade.

Error of Law Hearing

8. Before me, Ms Jones on behalf of the Appellant argued that the judge had erred in coming to his conclusions to dismiss the appeal, in that he had failed to engage fully with the case and the evidence before him. She referred to [14] and said that the judge had implied that he did not find the Appellant to be a credible witness but had not set out any reasoning as to what had led to that conclusion. In addition the decision was devoid of any analysis of one of the central issues, namely the question of whether the Appellant and his spouse are in a genuine and subsisting marriage. The appellant is entitled to have a finding made on this issue, because such a finding would be the starting point for the whole case.
9. Further, she submitted, the decision includes paragraph upon paragraph of irrelevant information. By way of example this approach is shown in [14] where the judge says:

“Bearing in mind that we are going through a fiscal crisis and everyone is expected to make a contribution to alleviate it I cannot be too generous in the case of this Appellant who was supposed to leave this country after completing his assignment for which he had satisfied the Entry Clearance Officer in Delhi. He had not come here to work and to find “work” in this situation is not allowed under the present Rules; everyone in the immigration field is conscious of the fact that “jobs” are needed by the local people.”

10. Finally she submitted that there had been no meaningful reference made to the relevant legal framework which was set out in Appendix FM to the Rules. The judge had failed to understand that this was the issue before him. These errors meant that the decision was unsafe and the appeal should be set aside and reheard.
11. Mr Nath on behalf of the Respondent served a Rule 24 response, but at the outset of his submissions he sensibly accepted that the decision of Judge Majid was fundamentally flawed for the reasons set out in Ms Jones's submissions. He invited me to set aside Judge Majid's decision and direct that the matter be heard afresh.
12. Accordingly I find force in Ms Jones's submissions and based on those submissions I find that there is error of law in the decision of Judge Majid, to the extent that the decision must be set aside and remade. As said by Ms Jones, the judge failed to engage with the evidence and made very few findings of fact. Those he did make were not properly explained. Having canvassed with the parties the appropriate forum for this appeal to be reheard, I find it is necessary to remit this matter to the First-tier Tribunal for the decision to be remade there. Nothing can be preserved from Judge Majid's decision. It is set aside in its entirety.

Notice of Decision

The decision of the First-tier Tribunal discloses an error on a point of law. I set aside the decision. The decision is to be remade in the First-tier Tribunal (not Judge Majid).

Anonymity

The First-tier Tribunal did not make an order for anonymity. I was not asked to do so and find no reason therefore to make such an order.

Signed

C E Roberts

Dated

05 November 2017

Deputy Upper Tribunal Judge Roberts