



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: HU/05166/2017
HU/05456/2017

THE IMMIGRATION ACTS

Heard at Field House
On 18 July 2018

Decision & Reasons Promulgated
On 31 July 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE HILL QC

Between

H K
K Z
(ANONYMITY DIRECTION MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Mr Raza, Counsel instructed by Marks & Marks Solicitors
For the Respondent: Mr A Everett, Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal from the decision of First-tier Tribunal Judge Obhi promulgated on 12 April of 2018. I continue the anonymity direction that was made in the First-tier Tribunal. The two appellants are married.

2. The first appellant came to the United Kingdom on 8 September 2011 with permission to enter as a student, extended on 14 June 2013 until 19 April 2016, curtailed on 28 April 2014 and reinstated to expire on 19 April 2016.
3. The second appellant is also a student who entered the UK on 2 February 2011 with permission to remain until 20 May 2012, extended until 31 June 2013 and thence to 19 March 2016, but this was curtailed on 3 April 2014. He has applied for leave to remain as a dependant of his wife, the first appellant.
4. The applications were refused by the Secretary of State on 21 February 2016.
5. The substantive issues in the ensuing appeal to the First-tier Tribunal concerned Appendix FM and paragraph 276ADE of the Immigration Rules.
6. Put shortly, the first appellant gave evidence that in a previous marriage her parents-in-law were abusive towards her and her own parents were dismissive of her concerns. Her husband continued to be abusive to her causing her ultimately to report the matter to the police. She says she moved out after five months and attempted to end her own life because of her unhappiness.
7. The first appellant met the second appellant at the college where they were studying in 2014. She divorced her first husband in January of 2015. The appellants are now married but she is of the Sikh faith and he is of the Muslim faith and neither of their communities will accept their decision to marry. Accordingly, it was argued, they cannot settle in either of their respective countries of origin.
8. The judge came to the conclusion that there were no very significant obstacles to the appellants returning to India as a married couple. In the circumstances the appeals were dismissed both under the Immigration Rules and separate human rights grounds.
9. Mr Raza, for the appellants, also appeared in the First-tier Tribunal. He supplemented his written grounds in oral submissions. First he made reference to a failure on the judge's part properly to apply the test prescribed in Agyarko.
10. The judge is criticised by Mr Raza for not quoting verbatim an extract from paragraph 43 of Agyarko which reads as follows:

"It appears that the European Court intends the word 'insurmountable obstacles' to be understood in a practical and realistic sense rather than as referring solely to obstacles which make it literally impossible for the family to live together in the country of origin of the non-national concerned."

The grounds of appeal contend that the judge gave no regard to this and instead set a test which went over and beyond this standard. Mr Raza referred to paragraph 39 of judge's decision where a different extract is quoted from

Agyarko, albeit in the context of proportionality. He suggests this is indicative of the judge misunderstanding the test to be applied.

11. There is nothing objectionable in not quoting verbatim extensive tracts of legal authority. Tribunal decisions are intended to be short and comprehensible and do not of necessity have to include swathes of narrated caselaw. Reading the decision holistically, I can detect nothing to suggest that the judge misapplied the test in Agyarko.
12. The judge looked with care at what might amount to very significant obstacles in relation to the particular facts and circumstances of this case. The judge noted in paragraph 41 that they are a married couple and part of their own self-contained family unit. The judge also noted at paragraph 39 that they are both educated in the United Kingdom and capable of working and setting up their family life in a country of which the first appellant is a national. In those circumstances I do not consider there to be any substance in the first ground of appeal.
13. The second ground of appeal advanced by Mr Raza relates to the manner in which the judge dealt with the country of origin information. Although there were minor criticisms of the way in which the judge recorded that concerning Pakistan, Mr Raza directed the majority of his submissions to the way in which the judge dealt with that relating to India.
14. In particular, complaint is made that although the judge cites paragraph 6.1.15 of the report, she does not expressly cite additional passages dealing with inter-religious marriages at 6.1.8, 6.1.9, 6.1.10, 6.1.11 and 6.1.12. In particular, 6.1.8 cites the Immigration and Refugee Board of Canada, which published a report on interfaith marriages in May 2012. The IRB report quoted an external source as stating

“While it isn’t the norm for interfaith couples to be subject to violence it does happen. The threat of violence will exist in the vast majority of cases from the families involved. Only in certain rural areas will individuals outside the family take an interest in an interfaith marriage and take any action. However the same report cited academic sources which noted that marriages between Hindus and Muslims particularly where the wife is Muslim could be more problematic than other interreligious marriages.”
15. Just as I do not consider it necessary for a judge to set out verbatim extracts from the caselaw, I similarly do not see cause for criticising this judge for not setting out and rehearsing every relevant extract from the country of origin information. It is quite clear that the judge had that material in mind when coming to the conclusions which she did.
16. Those conclusions are careful and detailed. I have particular regard to paragraph 39 which reads

“I am satisfied that although there may be prejudice towards the couple’s union that there are areas outside the Punjab such a Delhi and Mumbai where the couple could live without great hardship. They are both educated in the UK and are both capable of working and setting up their family life in the country of which the first appellant is a national. In considering the insurmountable obstacles I have had regard to the case of Agyarko in which the Supreme Court set out the position generally in relation to Article 8.”

17. Further, the judge says at paragraph 44

“I am satisfied that once in India the couple will be able to live in relative peace in any of the larger cosmopolitan areas of India. They do not need to live in the Punjab where the first appellant’s family live if, as she claims, her family are opposed to the union. I have balanced that hardship with the public interest and I am satisfied that the maintenance of a fair and effective immigration policy outweighs the temporary hardship that the couple may face in moving to India.”

18. It cannot be said that the judge did not have regard to the totality of the country of origin information merely because the direct quotation was limited in its content. On the contrary, the tenor of the decision makes plain that the judge gave proper scrutiny to the totality of the contrary of origin material and its application to the particular facts as found by the judge.

19. The final matters which Mr Raza raises go to the proportionality assessment and in particular the argument that the judge gave no or insufficient weight (i) to the fact that the second appellant’s leave to remain had been incorrectly curtailed at an earlier stage and (ii) that the first appellant had attempted to take her own life as a consequence of being a victim of domestic violence.

20. I consider Mr Raza’s criticism in this regard to be misplaced. The matters to which he refers were clearly within the contemplation of the judge and were properly summarised in the course of a full, thoughtful and balanced decision. I cannot see how in the particular circumstances of this case the proportionality argument would have been differently resolved. The judge’s careful analysis is the embodiment of best practice. In paragraph 43 she states:

“In considering proportionality I have regard to the established case law and to the reasons why the appellant’s claim that their private and family lives cannot be established in the country of origins. I refer back to my assessment of the country situation in Pakistan and in India. I am satisfied there are no very great hurdles to the first appellant returning to her country of origin and supporting the second appellant’s application for entry clearance as her husband. There is a large Muslim community in India and a more tolerant attitude towards interfaith marriages than in Pakistan. I accept that there continues to be an element of prejudice within the Sikh community in relation to Sikh Muslim marriages but as the first appellant herself comments that is no different to what exists in the minority communities of the UK. There are in my view no exceptional circumstances which prevents the couple from living in the country of origin of at least one of them. As I have commented earlier I believe I have insufficient evidence in relation to the claim that they

could not live in Pakistan. Whilst interfaith marriages are illegal and cannot be conducted or registered in Pakistan their marriage has already taken place. There is no evidence that an existing marriage will not be recognised. There is evidence of a high profile interfaith marriages having taken place.”

21. The grounds of appeal, carefully crafted and pursued with tenacity by Mr Raza, amount to no more than a disagreement with the disposal of the appeal by the First-tier Tribunal. The test in Agyarko was properly applied, the judge undoubtedly had the country of origin information firmly in mind, and the proportionality assessment cannot be impugned. There is no reason why the First-tier Tribunal decision should be set aside.

Notice of Decision

Appeal dismissed and decision of First-tier Tribunal affirmed

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 either of 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 *Mark Hill*

Date 25 July 2018

Deputy Upper Tribunal Judge Hill QC