



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: HU/16764/2016
HU/16767/2016

THE IMMIGRATION ACTS

Heard at Field House
On 8th May 2018

Decision & Reasons Promulgated
On 17th May 2018

Before

UPPER TRIBUNAL JUDGE MARTIN

Between

MR KUSHAL RAJESHBHAI SHETH
MS SONALBAHEN GOSWAMI
(ANONYMITY DIRECTION NOT MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Mr R Clarke (instructed by Lumine Solicitors)
For the Respondent: Mr C Avery (Senior Home Office Presenting Officer)

DECISION AND REASONS

1. This is an appeal to the Upper Tribunal by the two Appellants with permission. The Appellants claim to be an unmarried couple, both Indian nationals, the first Appellant being a man born in 1987 and the second Appellant born in 1979. The Appellants made a human rights claim to remain in the United Kingdom on the basis that they were in a durable relationship, that they could not be returned to India because they were of different castes, that the lady is eight years older than the man, that she was disabled,

that neither set of parents would accept the relationship and that their appeal therefore should be allowed on Article 8 grounds.

2. The First-tier Tribunal Judge heard evidence from both the Appellants and two witnesses. Those witnesses adopted their statements and it is accepted that they were not cross-examined in the First-tier Tribunal. Those two witnesses gave evidence that they knew the couple, the first had known them for some seven years and the second for only a year or so, but the evidence of both was that this couple were genuinely in a relationship and when the Judge considered the evidence and made her findings, other than confirming at paragraph 17 that the witnesses adopted their witness statements, there is no further reference to their evidence.
3. The Judge made a considerable number of damning adverse credibility findings. The first, which is unsurprising was based on the fact that the male Appellant had an appeal in 2014 when he told the Immigration Judge that he was in a relationship with a British citizen who was not at the hearing and she had not supplied a statement. The Judge at that time had found him to be incredible and that his evidence was completely contradictory. The current claim is that he has been in a relationship with the second Appellant since 2009 so the First-tier Tribunal Judge came to the conclusion that he had lied to the Tribunal; an inescapable conclusion. He also admitted having had somebody else take his English language test for him so he had admitted lying to the Home Office as well. The Judge concluded by saying that there was no credible independent evidence confirming that they were in a relationship and on the basis of the serious adverse credibility findings found that they were not.
4. I do consider it was an error of law that the Judge did not take into account the evidence of the two witnesses. At the very least she ought to have indicated what their evidence was and if she was attaching no weight to it because perhaps she thought they were not truly independent she should have said so. However she did not.
5. The question then is whether that error is material to the outcome of the appeal and in order to decide that, I look at the Decision on the basis of what would the result have been had she found that they were in a durable relationship?
6. When the Judge goes on to consider Article 8 she clearly does so on the basis that they are going to be together in India, notwithstanding her previous findings. The second Appellant has a disability. She has had polio and as a result she has mobility problems with her legs. The evidence that was submitted to the Judge was that she would face severe discrimination in India because of that; that no man would marry her because of her disability and indeed, the evidence was that her parents had disowned her. Her evidence was that they had supported her application to come to the United Kingdom as a student on the basis that they would have nothing further to do with her thereafter. The Judge quite reasonably says that if that is so, then it is not credible that they would force her to marry because cutting ties means having no further interest in her. That is a reasonable conclusion. The Judge also pointed out that if the evidence being relied upon was that nobody would marry her, then it also meant it was not credible that her parents would force her into a marriage because such a thing was impossible. The Judge did not accept there was no adequate treatment for her

disability in India and the Judge also considered the fact that despite what she said about discrimination she had managed to study in India, gain a Masters degree and obtain a job. If the discrimination was as bad as claimed, then it was highly unlikely that she would have been able to do either. Again, that is an entirely justified conclusion on the basis of the evidence.

7. The Judge also took into account the size of the country and considered that there would be no realistic threat or danger to either of them from either of their parents because India being a vast country, there was no credible way the parents would either know of their presence or be interested in doing anything about the relationship.
8. For those reasons I find the error in failing to take into account the corroborative witnesses evidence was not material to the outcome because even had the Judge found they were in a durable relationship, the conclusion would remain the same.
9. The second ground which is argued is that the Judge did not consider Article 8 in relation to each of the Appellants separately but looked at it together. I find that ground is not made out. It is quite clear that the Judge has considered the second Appellant quite separately and apart from the first because she has taken into account her disability, her ability to obtain an education, to obtain a job, the medical facilities available, the fact that the stigma claimed clearly did not apply to her and also considered the so-called threat from her parents. It cannot be said that the Judge did not take into account the two separate Appellants in deciding the Article 8 claim. Although this determination is not drafted in the best way and is flawed in terms of failing to take into account the witnesses' evidence, I find that the error made is not material and there is no error in relation to the Judge's consideration of Article 8. For those reasons the appeal to the Upper Tribunal is dismissed.

No anonymity direction is made.

Signed

Date 14th May 2018

Upper Tribunal Judge Martin