



**Upper Tribunal
(Immigration and Asylum Chamber)
IA/34142/2015**

Appeal Number

THE IMMIGRATION ACTS

**Heard at Field House
On 14th February 2018**

**Decision and Reasons Promulgated
On 25th April 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE PARKES

Between

**MOHAMMED MAHBUB ALOM
(ANONYMITY DIRECTION NOT MADE)**

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: In person

For the Respondent: Mr L Tarlow (Home Office Presenting Officer)

DETERMINATION AND REASONS

1. The Appellant applied for leave to remain in the UK on the basis of his family life with his partner. The application was refused and the Appellant appealed. His appeal was heard by Judge Farmer at Hatton Cross on the 26th of June 2017 and dismissed in a decision promulgated on the 28th of June 2017.
2. In the findings which start at paragraph 8 of the decision the Judge rejected the credibility of the Appellant and the Sponsor. The reasons included amongst other things the inability of the Appellant to recall the dates of his civil and Islamic marriages, when and the circumstances in which the Appellant met the Sponsor's children, when and how the relationship started, whether there had been home visits before the marriage, attendance at the ceremonies. The Judge noted that there were some consistencies but found that these did not repair the damage to their credibility arising from the inconsistencies identified.

3. The Judge went on to correctly set out that the burden of proof was on the Respondent referring to a marriage of convenience. In paragraph 26 the Judge found that the marriage was not a genuine marriage. Paragraph EX.1 did not apply and the Appellant was not assisted by paragraph 276ADE of the Immigration Rules and there was nothing exceptional to suggest removal would be disproportionate.
4. The grounds were described as lengthy and discursive by First-tier Tribunal Judge Pooler who considered the Appellant's application for permission to appeal. Having read the grounds Judge Pooler identified 2 arguable errors. The first was whether the Judge erred in referring to a marriage of convenience in addition to the issue of whether it was genuine and subsisting. The second was with regard to the Appellant's removal and the Judge's focus in whether the Appellant had severed ties to his home country.
5. At the hearing the Appellant argued that the First-tier Tribunal had not taken account of the legal arguments, evidence had been submitted and overlooked and the decision was against the weight of the evidence. They had been interviewed twice but the house had not been visited. The Judge had erred on EX.1, paragraph 276ADE and article 8.
6. In submissions Mr Tarlow accepted that it might be difficult for a litigant in person. The Appellant disagreed with the findings but the Judge had made adverse credibility findings that were open to him. The findings were made in the context of the burden shifting to the Secretary of State and read as a whole there was no material error.
7. In reply the Appellant stated that there were very significant obstacles to his return as that would break up the family, his wife has family in the UK and that can be an obstacle to family life continuing elsewhere, her children are here.
8. Whilst the Judge should not have referred to the issue of a marriage of convenience that does not assist the Appellant. It is a variation on the genuineness of the marriage. In paragraphs 10 to 20 the Judge set out a number of inconsistencies in the evidence and has explained.
9. In his grounds of application the Appellant suggested that there were explanations, for example his reply in relation to first meeting the children after the wedding was because he thought that was when the question was referring to. There is no ambiguity in the evidence recorded by the Judge and nothing suggests that the question was other than a simple enquiry about when they first met.
10. In the circumstances the findings made and set out in the decision were open to the Judge. The issues considered by the Judge covered a number of areas of the evidence and so it cannot be said that she failed to take an overall approach to the evidence that was presented. In addition the consideration of the consistencies and the photographs adds to the fact that the Judge gave overall consideration to the evidence presented.
11. At paragraph 26 the Judge found that the marriage was not genuine. If the references to marriages of convenience are ignored the decision remains sustainable, the reasons given in paragraphs 10 to 20 justified the conclusion in paragraph 26.
12. In finding that the marriage had not been shown to be genuine it followed that paragraph EX.1 did not apply and so there was no error in paragraph 29.
13. With regard to the proportionality of the Appellant's removal the claimed family life could play no part in that assessment given the findings that the Judge had made about the genuineness of

the marriage. Whilst family life and the family's circumstances could amount to very significant obstacles in finding that the marriage was not genuine the Judge could not then consider that in this part of the decision.

14. It would clearly have been better if the Judge had stated the correct test in paragraphs 30 and 31 but the reality is that the factors that were discussed by the Judge in those paragraphs went to the obstacles that the Appellant could face on return to Bangladesh. The Appellant is a national of Bangladesh and given the time he has spent in the UK, 10 years as opposed to 32 years in his home country and the family ties that he has retained there, that his private life was established when he was present precariously would not have led to a different conclusion. His position was undermined by the findings made in relation to the marriage. If there was an error in the words used by the Judge as she would inevitably have dismissed the appeal any error is not material.

CONCLUSIONS

The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.

I do not set aside the decision.

Anonymity

The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005 and I make no order.

Fee Award

In dismissing this appeal I make no fee award.

Signed:



Deputy Judge of the Upper Tribunal (IAC)

Dated: 20th February 2018