Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/06228/2018

THE IMMIGRATION ACTS

Heard at Glasgow
On 7th February 2019

Decision & Reasons Promulgated
On 11th March 2019

Before

DEPUTY JUDGE UPPER TRIBUNAL FARRELLY

Between

MR PAUL DUMAGO AMORADO
(NO ANONYMITY DIRECTION MADE)

Appellants

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the appellant: Mr. T Haddow, Counsel, instructed by McGill and Co
For the respondent: Mr Govan, Presenting Officer

DECISION AND REASONS

Introduction

1. The appellant is a national of the Philippines born on 17 August 1988. He came to the United Kingdom on the 30th September 2009 on a marriage Visa. He subsequently obtained various leaves, the last of which expired on 12 March 2016.

2. On 9 March 2016 he applied for indefinite leave to remain as the civil partner of a British national. This was in relation to a Mr [WM], hereinafter referred to as the sponsor. He is from Scotland and was born on 14 April 1944. The account was that the relationship began in 2007 and they started living together in September 2009. They then had a civil partnership ceremony on 28 January 2010.

3. His application was refused on 21 February 2018, with the respondent not accepting the relationship as genuine and subsisting, with the parties intended to live together permanently. This was necessary under paragraph 287 of the immigration rules.

4. There had been difficulties in the relationship, with periods of separation with Mr [M] at one stage contacting the respondent to advise of this.

The First tier Tribunal

5. The appeal was heard by First-tier Immigration Judge RG Handley at Glasgow on 7 August 2018. In a decision promulgated on 5 September 2018 the appeal was dismissed. The judge heard from the appellant and Mr [M] and had the benefit of separate interviews that were carried out by the respondent.

6. The judge accepted that their responses at interview were broadly consistent. The judge also accepted they had spent some time living together. The judge referred to the interview which took place on 30 January 2017. In May 2017 the sponsor advised the respondent that the appellant had not been living with him for 2 years. The judge referred to evidence indicating the appellant had been getting mail at the sponsor’s address.

7. The judge concluded the relationship had deteriorated with the appellant spending less and less time with the sponsor. Whilst the sponsor wanted the relationship to continue his actions indicated an acceptance that matters had deteriorated and the relationship was at an end. The judge concluded the relationship was not genuine and subsisting.

The Upper Tribunal

8. Permission to appeal to the Upper Tribunal was granted on the basis it was arguable that the judge misunderstood the requirements of paragraph 287. It was suggested he incorrectly believed the appellant had to demonstrate the relationship was subsisting throughout. Furthermore, it was argued the judge had not given adequate reasons for rejecting the evidence of the

appellant and his sponsor that the relationship was still subsisting despite past difficulties. It was arguable the judge's findings only dealt with relationship in the past and was not forward-looking.

9. Mr Haddow and Mr Govan were both in agreement that the test for whether the relationship was genuine and subsisting related to the current state of affairs, that is at the time of decision making, and there was no need to demonstrate this had been the position throughout. Mr Haddow pointed out that whether the judge understood the requirements was linked to the challenge as to the adequacy of reasoning. If the reason was adequate then it would demonstrate the judge was aware of the requirements.

10. Mr. Haddow referred me to the decision of South Buckinghamshire District Council -v- Porter (No 2) [2004] 1 WLR 1953 where the House of Lords at paragraph 35 said that a decision must be intelligible and adequate so that the reader can understand why the matter was decided as it was. In particular, he emphasised that the decision given must not give rise to substantial doubt as to whether there was an error in law, for instance, by a misunderstanding of a fact. In the instant case he submitted there was doubt as to whether the First-tier Tribunal was considering the relationship at the time of hearing or whether it felt there was a need to show the relationship was ongoing from the outset.

11. I was also referred to MK (duty to give reasons) Pakistan [2013] UKUT 00641 which again emphasise the need for a reasons behind the decision and why the evidence of a witness was believed or not.

12. I was then referred to the impugned decision at paragraph 10 onwards, with the observation being that much of the discussion related to past events. Mr. Haddow submitted that there was a leap from these past events up to March 2017 to the situation at the time of hearing in August 2018.I was then referred paragraph 14 of the skeleton argument which sets out findings which Mr Haddow submitted should have been made but were not. He also contended that the credibility assessment was flawed and I was referred to paragraph 19 of the skeleton argument.

13. Mr Govan submitted that the judge did apply the law correctly this and gave sufficient reasons. The appellant and Mr [M] both gave evidence and their credibility was in issue. He accepted that there had been a previous grant of leave the correctness of which was not challenged but the issue arising was whether the relationship was subsisting. He said that at paragraph 5 the judge identified the relevant immigration rule. He submitted that the judge would be required to consider the history of the relationship in assessing whether it was subsisting. He pointed out that the appellant in his oral evidence said he had only been away for a matter of days, as

recorded at paragraph 12 of the determination. It was put to him that this statement was at odds with other evidence which indicated they had been apart for a substantial period of time. I was referred to a letter which mentioned he would go away for 12 weeks at the time only calling for money. The judge refers to this at paragraph 18.

Consideration

14. There are 2 challenges to the decision of First-tier Immigration Judge RG Handley.The 1st is the suggestion that the judge mistakenly believed the appellant had to show the relationship had been subsisting on a continuous basis. The 2nd challenge associated with this was that the judge did not consider matters at the time of hearing. Related to these 2 challenges is the suggestion that the judge did not provide adequate reasons.

15. The appellant came to the United Kingdom on a Visa on 30 September 2009. He was then granted various other leaves until on 9 March 2016 he submitted an application for indefinite leave to remain as a civil partner. The refusal letter refers to the relevant rule at paragraph 287 of the immigration rules. This is concerned with the requirements for indefinite leave to remain as a spouse or civil partner of someone present and settled in the United Kingdom. In particular, the judge at paragraph 5 sets out the requirement that the applicant is still the civil partner of the person concerned and that each of the parties intends to live permanently with the other as their civil partner. Both representatives have confirmed, as is obvious from the wording of the rule, that this is a forward-looking provision.

16. At paragraph 6 the judge refers to the reasons for refusal letter and the respondent not being satisfied they were in a subsisting relationship. The judge referred to the respondent's refusal being based upon a large number of discrepancies and credibility issues about the relationship, including the content of an interview on 30 January 2017. Significantly, there was a letter from the sponsor dated 4 March 2017 to the effect that the relationship had broken down and he was no longer supporting the application.

17. The judge was hearing the appeal on 3 August 2018, a year later. The appellant was present as was the sponsor. The judge records at paragraph 11 the appellant's evidence was that the relationship had not broken down but he had left for a time. In cross-examination he was referred to the content of the interview. However, the appellant denied he and the sponsor had broken up but claimed to have only left the house for a few days. He also denied habitually staying with friends.

18. This was in contrast to the sponsor's evidence contained in his letter where he indicated the appellant had been away for 2 years. In his interview he had said the relationship had broken down for 2 years but changed this to the appellant leaving for periods. There was reference to the appellant being in London for 12 weeks. The sponsor's oral evidence was that they were now back together again. Clearly there were significant differences between the accounts given by the appellant and the sponsor at different stages.

19. At paragraph 17 on the judge made his findings. The judge accepted they had spent some time living together based upon the common ground displayed in their respective interviews. At paragraph 18 the judge sets out the history of the relationship, with it starting in 2007; with them living together in September 2009; followed by the civil partnership ceremony on 28 January 2010. The judge then referred to the sponsor's letter of 22 August 2016 where the sponsor did not know the appellant's address or phone number and indicated he only visited to collect mail and have been absent in London for 12 weeks and calling when he needed money.

20. The judge concluded that in August 2016 the appellant was an infrequent visitor. Given the evidence before the judge this was a finding that was open. The judge then refers specifically to the sponsor's letter where he indicated the relationship was no longer subsisting.

21. I can see no evidence whatsoever in the decision that the judge believed the relationship had to be ongoing. The judge identified inconsistencies between the appellant's claims about the sponsor and the sponsor's evidence. The sponsor in his letter had clearly indicated the relationship was at an end albeit by the time of the hearing he had aspirations and it could be rekindled.

22. At paragraph 21 the judge refers to the interview of 30 January 2017 where the appellant accepted there had been a break in the relationship. He also accepted in the past 2 years he had hardly been in the house. However, in his oral evidence a different account was given. Clearly therefore there were credibility issues arising.

23. The judge concluded at paragraph 23 by accepting that the appellant and the sponsor were previously in a relationship. The judge then went on to say that the evidence clearly indicated the relationship had deteriorated, with the appellant spending less and less time with the sponsor. The judge reached the conclusion that the sponsor now wanted the relationship to continue. The judge suggests that whilst the sponsor had a hope the relationship would revive there was an acknowledgement that it had ended.as I read

this the judge is contemplating the past history of the relationship, the present and the future.

24. I am satisfied that the judge was aware he was looking at matters as at the time of hearing. There was strong evidence from the interview to suggest the relationship had ended. The appellant at hearing gave an account which was at odds with his earlier interview. The findings the judge made when ones open to the judge. I see nothing to suggest the judge did not appreciate the forward-looking nature of the provisions. The judge has given clear and sustainable reasons for the findings made. In conclusion therefore, I find no material error of law established.

Decision

No material error of law has been established in the decision of First-tier Tribunal Judge RG Handley. Consequently, that decision dismissing the appeal shall stand._

DEPUTY JUDGE UPPER TRIBUNAL FARRELLY