



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-000533
First-tier Tribunal No:
EA/04118/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 09 July 2023

Before

UPPER TRIBUNAL JUDGE PERKINS

Between

SHARMA KARAN
(NO ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: No appearance

For the Respondent: Mr A Everett, Senior Home Office Presenting Officer

Heard at Field House on 27 June 2023

DECISION AND REASONS

(extempore)

1. The appellant in this case seeks to challenge the decision of the First-tier Tribunal dismissing the appeal of the appellant against a decision of the Secretary of State to refuse him a family permit as the spouse of an EEA national. The appellant did not appear before the First-tier Tribunal. He had asked for the appeal to be determined on the papers. The appellant did not appear before me. The Tribunal records show that notice of hearing was sent by email on 6 June. There has been no response to that and my clerk confirmed at about 11.30 a.m., when it was convenient to deal with the case, that the appellant was not here. In the circumstances I am satisfied that there has been good service in law and I decided to determine the case in the appellant's absence.
2. The appellant makes a potentially good point. It is his complaint that the First-tier Tribunal dismissed the appeal because he had not satisfied the judge that his was a valid marriage but the reason he had not satisfied the judge that his was a valid marriage is that he relied on a marriage by proxy and he had produced no

expert evidence to show that such a marriage would be recognised by the laws of India, and therefore (for present purposes) the laws of the United Kingdom.

3. He said that this was a point he was not anticipating and that this was not fair. I instinctively have considerable sympathy to people who have been wrongfooted by judges taking points that should not have been anticipated and more so when the person is representing themselves.
4. However, when looked at matter closely it is not quite as it seems. I agree, and indeed Ms Everett fairly and properly agrees, that the thrust of the objection in the refusal letter was not the validity of the marriage but whether the partner to the marriage was in fact exercising treaty rights. That said, it was unequivocal that it was not accepted that the appellant had shown that there was a relevant marriage. However, when the appellant was dealing with the First-tier Tribunal he indicated that one of the things he had to show was there was not sufficient evidence to show that he was the spouse of the sponsor. In other words, it was clear that he had not shown to the satisfaction of the Secretary of State that there was a marriage.
5. The grounds of appeal to the Upper Tribunal do not assert, as might be expected, that the appellant was completely wrongfooted but rather repeat that he accepted that he had to prove that he was married and maintain that the evidence did prove that he was married. It follows that the reason given by the First-tier Tribunal for giving permission to appeal is not really made out. This is not a case where the appellant is arguing particularly strongly that he was wrongfooted by a new point being taken, but rather it was his case that the evidence he had produced should have been sufficient.
6. Even if the appellant did find he had been wrongfooted he only succeeds before me if he can show there was a material error and he has not sought to adduce further evidence to show that his was in fact a valid marriage.
7. So, in the event of my having to re-determine the appeal there would be nothing before me which would enable me to reach a different conclusion and this is, I find, a fatal omission in the preparation of the case.
8. In short, although I have started off with considerable sympathy in reality I am not satisfied that the appellant was wrongfooted and I am definitely not satisfied that if he was wrongfooted it was actually a material error because he has done nothing to show that he could prove that the marriage was valid, if that is what he had to do, and for all these reasons I dismiss the appeal.

Notice of Decision

9. Appeal dismissed.

Jonathan Perkins

Judge of the Upper Tribunal
Immigration and Asylum Chamber
7 July 2023