



**Upper Tier Tribunal
(Immigration and Asylum Chamber)**

Appeal Numbers: OA/22069/2013
OA/22071/2013
OA/22072/2013
OA/22078/2013

THE IMMIGRATION ACTS

**Heard at Birmingham
On 19 December 2014**

**Determination Promulgated
On 7 January 2015**

Before

Deputy Upper Tribunal Judge Pickup

Between

**Tulasi Devi Bhandari
Bishal Bhandari
Hari Bhandari
Sangita Bhandari
[No anonymity direction made]**

Appellants

and

The Entry Clearance Officer New Delhi

Respondent

Representation:

For the appellants: Mr I Hussain, instructed by Syeds Law Office Solicitors
For the respondent: Mr N Smart, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. These are the appellants' appeals against the determination of First-tier Tribunal Judge Parkes promulgated on 9.7.14, dismissing their linked appeals against the decisions of the respondent, dated 2.12.13, to refuse their applications made on 15.11.13 for entry clearance to the United Kingdom as the dependants (wife and 3 children) of a Tier 2 migrant. The Judge heard the appeal on 20.6.14.

2. First-tier Tribunal Judge Molloy granted permission to appeal on 4.8.14.
3. Thus the matter came before me on 19.12.14 as an appeal in the Upper Tribunal.

Error of Law

4. In the first instance I have to determine whether or not there was an error of law in the making of the decision of the First-tier Tribunal such that the determination of Judge Parkes should be set aside.
5. The refusal decision in relation to the first appellant noted that whilst a marriage certificate had been submitted, dated 8.1.08 and purporting to confirm a marriage taking place on 18.1.95, was evidence that a marriage had been registered, it was insufficient to demonstrate that the relationship is subsisting or that they intend to live together in the UK as each other's spouse. The only evidence of an ongoing relationship was a photograph said to show the sponsor with the appellants. The Entry Clearance Officer considered it reasonable to expect that a relationship dating back to 1995 would have accumulated numerous items that could be relied on as evidence of a genuine and subsisting relationship. The first appellant's application was thus refused and the applications of the other appellants failed in consequence, there being no serious compelling family or other considerations making it desirable not to refuse their applications.
6. Judge Parkes found most of the documentary evidence relied on by the appellants to be unreliable and unsatisfactory. At §25 the judge reached the conclusion that the evidence was insufficient to demonstrate that the relationship between the first appellant and the sponsor was subsisting, citing a lack of evidence of regular contact or financial support. The judge also noted that the appellants did not meet the maintenance requirements of the immigration rules. The appeals were therefore dismissed.
7. The grounds of application for permission to appeal challenge the manner in which the judge conducted the appeal proceedings in the First-tier Tribunal. However, in the absence of adequate and admissible evidence, that ground is not made out.
8. The grounds allege an error of law on the basis that the judge addressed issues of maintenance and accommodation requirements of the Immigration Rules in the absence of those matters having been raised as issues in the refusal decisions.
9. The grounds also allege that that the reliance on maintenance and accommodate issue infected the examination of the evidence as to the subsistence of the marriage between the first appellant and the sponsor.
10. In granting permission to appeal, Judge Molloy examined the refusal decisions and considered it arguable that the judge's on accommodation and maintenance issues, not raised by the Entry Clearance Officer in the refusal decisions, were arguable errors of law.

11. As these are out of country appeals, the Tribunal could only consider the circumstances appertaining at the date of decision, namely 2.12.13.
12. In relation to the judge's reliance on maintenance, Mr Hussain, who appeared at the First-tier Tribunal hearing, stated that the only discussion about finances at the hearing was in relation to the £18,600 threshold. He points out that the appellants were not given the opportunity to make submissions through him or to call evidence regarding the Tier 2 financial requirements. I note from §13 the judge erroneously referred to the sponsor being a Tier 1 migrant. In fact, the judge got the financial requirements wrong, as a Tier 2 migrant can have maintenance provided by a sponsor and the rates per dependant are different from those cited by the judge.
13. In relation to accommodation, another issue not relied on by the Entry Clearance Officer, the judge was concerned about variations in the Burnley Road address, and the discrepancy between that address appearing on various documents and the accommodation report address of Normandy Road. It is clear from §20 that the judge's concerns as to accommodation arose after the appeal hearing and thus Mr Hussain was not afforded the opportunity to offer an explanation for the alleged discrepancies, which is given in the grounds of application for permission to appeal to the Upper Tribunal. In summary, that explanation is that the sponsor used his work address for correspondence, not being at home during the day. Whether that is right or not, there was no opportunity for that to be addressed in evidence or by submission at the hearing.
14. In the circumstances, I find that it was unfair for the judge to take and rely on either of the accommodation and maintenance issues without allowing the appellants' representative to make submissions and, if necessary, call evidence. As it happens, there was a serious factual error in relation to the maintenance issue, and what may well be a misunderstanding about the addresses used on the various documents adduced in evidence.
15. In the circumstances, the judge's findings at §14 that the appeal could not succeed on maintenance grounds cannot stand. The judge does not appear to have reached a conclusion as to the issue of accommodation, as at §25 reliance is placed only on the issues of subsisting relationship and maintenance.
16. The issue next arises as to whether the flawed findings and conclusions in relation to maintenance and/or accommodation so adversely affect the other and crucial finding, that of subsistence of marriage. Given that at §24 the judge found the evidence "overall" unreliable and unsatisfactory, so that no weight was accorded to any of the documents, it is clear that there has been a degree of overlap if not contagion between the flawed findings and the issue of subsistence of relationship. In my view it would be unfair and unsafe to try to separate out the flawed findings from what remains. The best and proper course is to set the decision aside as a whole and to relist it for rehearing.

Conclusion & Decision:

17. The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law such that the decision should be set aside.

I set aside the decision.

I reserve the remaking of the decision to myself in the Upper Tribunal.



Signed:

Date: 31 December 2014

Deputy Upper Tribunal Judge Pickup

Consequential Directions

18. The appeal is to be relisted in the Upper Tribunal at the first available date, reserved to Deputy Upper Tribunal Judge Pickup;
19. The hearing will be a de novo appeal, with no findings preserved;
20. The time estimate for the hearing is 2 hours;
21. The appellants' bundle is badly organised and entirely unacceptable. The appellants' representative must compile a new appeal bundle putting documents in correct order with simple pagination and index, and provide the same to the Tribunal and serve on the Secretary of State not later than 7 days before the adjourned hearing date;
22. An interpreter will be required for the sponsor. If it is not clear from the case file what language is required, the appellants' representative should be contacted to clarify.

Anonymity

I have considered whether any parties require the protection of any anonymity direction. No submissions were made on the issue. The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

Given the circumstances, I make no anonymity order.

Fee Award

Note: this is not part of the determination.

In the light of my decision, I have considered whether to make a fee award (rule 23A (costs) of the Asylum and Immigration Tribunal (Procedure) Rules 2005 and section 12(4)(a) of the Tribunals, Courts and Enforcement Act 2007).

I have had regard to the Joint Presidential Guidance Note: Fee Awards in Immigration Appeals (December 2011).

I make no fee award.

Reasons: The outcome of the appeals remains to be decided.



Signed:

Date: 31 December 2014

Deputy Upper Tribunal Judge Pickup