



IAC-FH-CK-V2

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

Appeal Number: IA/07442/2015

THE IMMIGRATION ACTS

**Heard at Field House
On 20 January 2016**

**Decision & Reasons Promulgated
On 10 February 2016**

Before

UPPER TRIBUNAL JUDGE ALLEN

Between

**MR FAZLURREHMAN ANSARI
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr O Noor, Counsel instructed by Imperial Visas

For the Respondent: Mr I Jarvis, Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal against the decision of Judge Asjad, who dismissed the appeal of Mr Ansari against the Secretary of State's decision of 5 February 2015 deciding to remove him from the United Kingdom under section 10 of the 1999 Act. It concerned a claim on the basis of family and private life.
2. The challenge to the decision was essentially twofold, first that the judge had failed to make a finding of fact as to whether or not Mr Ansari is married to Mrs Ansari and secondly whether the judge's finding in relation to the alternative basis upon which the claim was put that the couple had

lived together for at least two years during the relevant period, two years up to 13 December 2012, was a decision that the judge properly came to bearing in mind documentary evidence that had been provided and there is reference also, which I shall later touch on, to a letter from previous representatives referring to the fact that the couple had been separated but had become reconciled.

3. The judge who granted permission to appeal essentially I think embraced all the points made in the grounds and therefore all was open for argument. The first point to consider is the question as to whether or not the judge erred in not deciding the point of whether Mr and Mrs Ansari are married. At paragraph 3 of her determination she said that it was submitted on behalf of the appellant that his application fell to be considered on the basis that he is the partner of Mrs Ansari under Appendix FM of the Immigration Rules because there was no evidence of marriage and paragraph 276ADE.
4. As against that Mr Noor, who also appeared below, points among other things to his skeleton argument where he referred at paragraph 8 to the genuine and subsisting relationship with Mrs Ansari, with whom the appellant had been married since 4 November 1977, although it is fair to say that the bulk of the argument in that regard was related to the provisions in the Rules relating to requirements for limited leave to remain as a partner. My scrutiny of the judge's Record of Proceedings does not provide a clear indication if there was any concession in this regard and neither does Mr Jarvis' reading of the Presenting Officer's notes, which recall the cross-examination only.
5. So there is I think an issue here about the question of marriage which is, it is argued, not an immaterial one even though the judge went on to consider the situation with regards to the two years under the Rules but would at least have implications for a consideration of Article 8 outside the Rules. I will come back to that.
6. The second point, as I say, is the argument that the judge erred in her assessment of the evidence concerning the relationship between Mr and Mrs Ansari as I have referred to. There was a letter from the previous solicitors Marks & Marks, referring to the couple having separated at one point. It was denied by Mr Ansari and by his son who gave evidence that they had given this information to the solicitors. That was not accepted by the judge. Mr Noor argues that in any event it is irrelevant because the relevant period is this two year period to December 2012. A lot of evidence was produced in relation to that and I agree that that is not a decisive point although it is relevant of course in the judge's assessment of credibility as a whole.
7. The judge gave quite detailed consideration to the documentary evidence. At paragraph 7 in particular she noted various ways in which the appellant's name was recorded on various documents and the range of variations that existed and her concern that the reference might just as

easily be a reference to his son, given that they could be said to share the same initials being Mr F R Ansari.

8. Also, at paragraph 10 she went on to look in some detail at particular documents which she found did not bear out the claim that the evidence showed that the couple were living together in a relationship akin to marriage or civil partnership. She said for example that there was no evidence of joint finances, only fleeting references on documents relating to bank accounts, and she cited particular documents. One of these is one upon which Mr Noor relies and that is to be found at paragraph 64 of the bundle. This is a letter from Essex & Suffolk Water which is addressed to Mr Fazal Ansari but it refers to the bank account name of Ansari F S & S F and one of the points made by the judge here was that F S is not Mr Ansari's name in fact but the bank account number and the bank sort code are both provided.
9. At page 97 of the bundle there was a letter which was in fact addressed to both Mr and Mrs Ansari and that has the account number and the sort code which is the one referred to in the Essex & Suffolk Water document and there are other documents from the water company which again refer to that same sort code and account even though the letters are addressed to Mr Ansari only but the letter at page 97 I think is quite important in as it were tying them together to this joint account which is referred to in any event on the other documents being in both names. That one gets Mr Ansari's name right and I think that there is force in what Mr Noor says about typographical errors having been as it were interpreted against the appellant because it is clear that the NatWest account regard it as being Mr F R and Mrs F S Ansari although the water company referring to that same account certainly got his initials wrong.
10. I think, looking at the evidence of the documents as a whole, while I take Mr Jarvis' point that one could not ordinarily expect a judge to delve into the kind of detail that has been gone into here, particularly since these matters were not only addressed in detail by the judge setting out at least in Mr Noor's skeleton argument though he may well have gone into it in detail in his oral submissions. Nevertheless, though the judge has gone into the kind of detail which she did here I think that there are concerns about the findings to which she came although again I see Mr Jarvis' point that the evidence has to be considered as a whole and there are aspects of the findings which had not been challenged where the judge came to an adverse view on credibility.
11. I do have sufficient concern about the two issues in this case, the failure to address the question of the couple being married and the relevance of that for the rest of the appeal and also the scrutiny of the documentation although admittedly there was a lot of it. In that I think the judge in both respects did materially err. As a consequence, as I see it, the matter has to be revisited. I think that Mr Noor was right that the degree of detail is such that the remaking needs to be made in the First-tier Tribunal and so it will actually be remitted back to a judge in Birmingham again.

Signed

Date

Upper Tribunal Judge Allen