



IAC-AH-SAR-V1

Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: EA/00736/2017

THE IMMIGRATION ACTS

**Heard at Field House
On 20th July 2018**

**Decision & Reasons Promulgated
On 15th August 2018**

Before

UPPER TRIBUNAL JUDGE FRANCES

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**MUHAMMAD HASSAN
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: Ms Kiss, Home Office Presenting Officer

For the Respondent: Ms Ramzan, instructed by Legal Chambers Solicitors

DECISION AND REASONS

1. Although this is an appeal by the Secretary of State, I shall refer to the parties as in the First-tier Tribunal. The Appellant is a national of Pakistan born on 11 February 1965. His appeal against the refusal of a residence card, as confirmation of a right of residence as a spouse of an EEA national under the Immigration (EEA) Regulations 2016, was allowed by First-tier Tribunal Judge B Lloyd on 22 February 2018.

2. The Secretary of State appealed on essentially four grounds. The judge failed to consider the Appellant's poor immigration history, failed to take into account factors which suggested that the marriage was not genuine, failed to make clear findings on the weight he attached to the evidence in the witness statements, and failed to give adequate reasons. Permission to appeal was granted by First-tier Tribunal Judge Shimmin on 7 June 2018 on the basis that those grounds were arguable.
3. The Appellant claimed to have entered the UK in 2010. On 9 March 2015 he was encountered by Immigration Officers attempting to marry a Latvian national. The marriage was stopped and the Appellant was served with illegal entry papers. On 13 March 2015 he applied for a residence card and on 17 March 2015 he married the same Latvian national. His application was refused and he subsequently withdrew his appeal, making a second application for a residence card on 24 June 2016.
4. First-tier Tribunal Judge B Lloyd found that the Appellant's wife was a qualified person and there was no challenge to this finding in the grounds of appeal. He found that the interview record produced by the Respondent was not helpful and that there was insufficient evidence from the Respondent to show that the marriage was a sham intended to circumvent the EEA Regulations 2016. The judge accepted the oral evidence of the Appellant and his wife that the marriage was genuine.

Submissions

5. Ms Kiss submitted that the Appellant had a detailed and adverse immigration history, which was set out in the refusal letter and in the Home Office summary in the Respondent's bundle. It stated:

"The Appellant has claimed to enter the United Kingdom in 2010, although there is no evidence to confirm this. The Appellant did apply for entry clearance three times for entry clearance (sic) in his former identity as Alam Mehboob. The dates of these applications are 14 December 2005, 24 April 2008 and 2 June 2008. The first application was refused for providing fraudulent evidence of relationship to a claimed sister and brother-in-law. The two subsequent applications were refused without a right of appeal due to the decision on the first application."

6. Ms Kiss submitted that there was no mention of the Appellant's previous deception in the decision of the First-tier Tribunal. The judge acknowledged that he had entered the UK unlawfully at [10], but failed to refer to the previous entry clearance applications and the Appellant's use of fraudulent evidence. The Presenting Officer submitted that the Appellant's previous immigration history, set out in the reasons for refusal letter, demonstrated a propensity to deceive and this was clearly relevant to the assessment of whether the marriage was one of convenience. The Presenting Officer's note of the submissions made is as follows:

"Claims he entered the UK illegally in 2010, he was refused entry clearance three times under different ID, refused for submitting fraudulent docs. Ask you to find this conduct shows A has a propensity to dishonesty particularly when he believes it will assist him in his case and has no regard for immigration law. Shows he is prepared to do and say anything to remain in the UK".

7. Ms Kiss submitted that this part of the Respondent's case had not been properly dealt with by the judge and the factors against the Appellant had not been considered. The Appellant had used a false name on three occasions. He had exercised deceit in the past and the Appellant's evidence should have been assessed against this background.
8. The grounds of appeal amounted to an accumulation of matters which showed that the judge failed to address the Respondent's argument. The Appellant lived in the same apartment block as his spouse for some time, but they only met on Valentine's Day in 2014. The relationship developed very swiftly and they were living together before the end of the month. The judge's failure to appreciate this against the background of a propensity to deceive meant that the judge's credibility findings were flawed and the matter should be remitted to the First-tier Tribunal for re-evaluation.
9. Ms Kiss submitted that it was clear from [32] of the judge's decision that he failed to look at the matters relied on by the Respondent with any depth and failed to take into account the Appellant's adverse immigration history in assessing credibility. The details referred to in the refusal letter and in the Presenting Officer's submissions were not referred to in the decision.
10. Ms Ramzan submitted that the Respondent provided a record of the interview at the registry office, but it was for all intents and purposes illegible. The Respondent relied on inconsistencies given in answers to questions in that interview. The Appellant's immigration history was set out in a short paragraph in the refusal letter. It was for the Respondent to show that the marriage was not genuine and the Respondent had failed to submit sufficient evidence to show that the marriage was a sham and was one of convenience. The Appellant had explained the previous entry clearance applications in a different name because he had changed his name. The judge did take this evidence into account, but preferred the evidence of the Appellant and three independent witnesses.
11. In response, Ms Kiss submitted that in the Respondent's bundle there were copies of refusals of entry clearance in the name of Mahboob Alam dated 22 April 2008 and 2 June 2008. There was also an Immigration Officer's report, which linked the Appellant's wife with another application for a residence permit in relation to another person. The judge specifically dealt with this report in the decision and therefore it was also incumbent on the judge to deal with the other applications for entry clearance, and to assess the Appellant's credibility against his previous immigration history and the submission that he had a propensity to deceive.

Discussion and Conclusions

12. The judge took into account that the Appellant and his spouse met on Valentine's Day and started cohabiting later that month at [14] and [19]. He specifically referred to the fact that they had lived in the same apartment block, but had only met each other by chance on 14 February 2014. The weight to be attached to the witness statements of independent witnesses was a matter for the judge and the judge made clear that those witness statements corroborated the Appellant's account. The judge noted that the Appellant entered the UK unlawfully at [10] and he took into account the refusal letter in the Respondent's bundle at [7]. The judge considered all the documentation that was before him at [37] and the failure to specifically refer to a document does not amount to an error of law.
13. The judge's failure to set out the Appellant's immigration history, in particular the three previous applications for entry clearance, did not preclude his finding that the Appellant was a credible witness. The judge gave adequate reasons for finding that the marriage was genuine and subsisting and any failure to refer to a poor immigration history was not material to his credibility findings. It had not been shown that the previous applications for entry clearance did establish a propensity to deceive such that the judge could have come to a different conclusion.
14. The difficulty the Respondent has in this case is that the application was refused on the basis that the marriage was a sham. The judge quite properly found that the Respondent had failed to submit sufficient evidence to show that the marriage was a sham. However, there was sufficient evidence from the Appellant, his wife and other witnesses to show that the marriage was genuine and subsisting and therefore the Respondent had failed to discharge the burden of proof.
15. The judge's findings were open to the judge on the evidence before him. I find that there was no error of law in the decision promulgated on 22 February 2018 and I dismiss the Respondent's appeal.

Notice of decision

Appeal dismissed

No anonymity direction is made.

J Frances

Signed:

Date: 6 August 2018

Upper Tribunal Judge Frances