



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

Appeal Number: HU/21304/2016

THE IMMIGRATION ACTS

Heard at Field House

On 8 January 2018

**Decision & Reasons
Promulgated
On 6 February 2018**

Before

UPPER TRIBUNAL JUDGE McWILLIAM

Between

**MRS NABA ALI RAZA
(ANONYMITY DIRECTION NOT MADE)**

and

Appellant

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr P Richardson, Counsel instructed by Nasim & Solicitors
For the Respondent: Mr T Melvin, Senior Presenting Officer

DECISION AND REASONS

1. The Appellant is a citizen of Pakistan and her date of birth is 5 May 1985. She made an application for leave to enter the UK as a spouse of a British citizen, Mr Ali Raza (date of birth 5 May 1981) ("the Sponsor"). The couple married in 2014. The Sponsor is severely sight impaired. The application was refused by the ECO in a decision of 11 August 2016. The ECO was not satisfied that the Appellant demonstrated a sufficient level of contact to show that her relationship with the Sponsor has continued beyond their wedding and that the relationship was genuine and subsisting.

2. The Appellant appealed and her appeal was dismissed by First-tier Tribunal Judge Raymond following a hearing on 6 September 2017. The decision was promulgated on 13 September 2017. Judge Raymond dismissed the appeal under the Immigration Rules and Article 8. The Judge concluded that the marriage was not genuine or subsisting.
3. The Appellant was granted permission First-tier Tribunal Judge J M Holmes on 2 November 2017.

The Decision of the FtT

4. The judge heard evidence from the Sponsor and Mr Abdul Rauf Butt. The salient findings were made between paragraph 65 and 108. For the purposes of this decision it is necessary for me to quote the following paragraphs:-

“57. Because their joint witness statements say nothing in effect how each as individuals see their marriage *I asked* the sponsor how his wife saw her future as a professional woman who has married a man who will never work and is partially sighted; he replied that basically she says that her parents arranged it and she accepted it – people get old and lose their sight – Asked to explain this because the appellant is an educated young woman and she would not be looking after an elderly partner; the sponsor replied that the appellant says she is happy whatever decision her parents made – *I asked* the sponsor whether he had discussed these issues with his wife as a woman who has an educated and professional past; he replied that she is happy with him and does not have any problems. – *I asked* the appellant whether he had discussed with the appellant what kind of father he would be to their children given his disability; he replied that they had never discussed this – they both want children – and his children will see him as a disabled father. – *I asked* the sponsor whether he had never thought about this; he replied that until now he had never thought about this – his father is old and disabled – everyone will be like that. – *I put it* to the sponsor that the Secretary of State was in doubt whether the marriage was genuine and should the Tribunal be surprised that he and his wife as adults had never discussed this; he replied that their marriage was genuine – he gets feelings about being disabled but his wife reassures him – whatever he is she is happy because her parents arranged it – his own parents arranged it – and in his culture that is how they arrange marriage – the appellant says that she has never had objections and she wants to spend all her life with him – *I put it* to the sponsor that as an example of the circumstances of his marriage had he ever discussed with his wife that he would never be able to play football with a son if they ever have one and they are both adults after all; he replied that until now they have never discussed these things – but they were trying their best to have children – and his wife always reassures him that she is there to cover his deficiencies – that she will always cover the gap – and will be always with him (ps7-8)

...

62. Mr Butt [the Appellant's maternal Uncle] was asked in *evidence-in-chief* why the appellant as a young woman would marry someone who had the disability of the sponsor; he replied that their family are friends – both sides knew each other. – The question was repeated and pointed out that it related to the appellant and not her parents; he replied that they had known each other for years – and his loss of eyesight did not matter to them. – His sister had given him the contact details of the sponsor – and he had gone to see him before the marriage and approved – Mr Butt was very happy with his character and the way he talked – he thought this is what we need – his niece is a very caring woman by nature. *To my questions* the witness confirmed that he was himself a father, and his daughter was getting married. *I asked* how he would feel if his daughter married someone with the disabilities of the sponsor and who could not for example play football with a son if he had one; he replied that someone has to do that – he will be able to look after his kids with the help of his wife (ps9-10 of my notes)."

...

65. The core feature of this claimed marriage is that a young university educated woman, who worked professionally in Pakistan as a teacher, has married a man who is almost blind, who as a result cannot work, and will never be able to work together with his wife in providing for their family.
66. His day to day existence will have to be managed because of his disability for the rest of her life, according to his own evidence, and her own statement in her VAF.
67. Thus, for example, he cannot go shopping alone; and his ability to make ATM cash withdrawals are to a certain extent limited.
68. His role as a father in the lives of their children will be limited as a result of his disability, such as in playing games with children that require an obvious degree of dexterity of eye, whether board games or physical games such as football or tennis, or throwing or catching of a ball of whatever size, which little boys and girls may like to play with their father, or possibly even just leapfrogging or larking about in a part in all safety.

...

70. It is not a question of whether a person with severely impaired sight, or totally blind, should be able to marry or possibly found a family, with a person who does not share that disability, or even with a partner who does.
71. It is not a question of whether the couple in such a case have looked together as responsible adults, entering upon a marriage relationship, at the obvious and necessary questions that would not arise for any other couple in whose lives such a feature, impacting upon many ordinary and routine aspects of their married life into the foreseeable future, is not present.
72. But the evidence of the sponsor himself is that the couple have never asked themselves such questions, and his explanation for this is that everything is in order because the marriage was

arranged by their respective families, as is the norm in their culture, which they have accepted, and it is the same as if his wife would be looking after an elderly relative (see paragraphs 33, 50 & 57 above).

...

74. But this appeal is about a young educated woman in making this choice.

75. Whereas there is nothing from the appellant herself in regard to these questions.

...

81. I consider that the following are such countervailing factors, in addition to the sponsor not having apparently given any thought as to what feature he could offer his wife, and any possible children, given his severe sight disability, and how he should consider the position of his wife in such a context, but considering instead that these are matters which could be left to their respective families.

87. The evidence of the sponsor and his witness Mr Butt in emphasizing that the marriage was principally the result of a negotiated compact between the families, with no genuine reflection having been given to the future of the appellant as a university educated teacher in marrying a virtually blind unemployed man, rather than a contract of marriage between the couple, does give credence to this as having been the primary motive.

88. It is telling in this context that the appellant herself in her VAF refers only to coming to the UK to take care of the appellant who needs daily help, and there is no reference to what she would bring to the future of the marriage in the UK as an educated woman who has worked as a teacher, with her VAF inaccurately asserting in fact that she has never worked in the public service (q64).

89. It is only the evidence at the hearing of the sponsor, and Mr Butt who purports to have played a role in negotiating the family agreement for the marriage, which brought out her background.

90. Whereas, her statements, replicating that of the sponsor, and as has already been noted, does not provide any insight at all on why she would consider the marriage to be genuine and subsisting.

..."

The Grounds of Appeal

5. The grounds of appeal argue that the judge failed to take into consideration a letter from the DWP supporting that the Sponsor had been awarded a backdated disability payment covering a period of four and a half years which accounted for a payment into his bank account. Mr

Richardson representing the Appellant was not able to locate the letter from the DWP in the Appellant's bundle. He contacted with his instructing solicitors who were unable to assist him. He was responsible for the grounds of appeal and believed that he has seen such evidence but accepted that he was unable to locate this. He abandoned this ground of appeal.

6. Mr Richardson submitted that the judge showed a lack of empathy and prejudice towards the Sponsor's disability rendering his conclusions irrational. It was wrong of the judge to refer to his disability as the core feature of the appeal. He described the judge's finding at [68] as "outrageous" because the suggestion by the judge is that someone with a disability cannot be a proper father. It is clear from the decision read as a whole, in particular [81], that the main reason the judge found the marriage was not genuine and subsisting was because of the Sponsor's disability which was a matter that the Respondent had not raised
7. Mr Melvin accepted that the Sponsor's disability played a part in the findings but argued that the judge was entitled to find that money had changed hands and this was an arranged marriage purely for the purposes of obtaining a visa for the Appellant.

Error of Law

8. The judge focussed on the Sponsor's disability. A proper reading of the decision, set out at length above, makes it clear that he found the Sponsor's disability a core feature of the case and that it undermined the evidence that the marriage was genuine and subsisting. His findings are subjective and speculative. He considered immaterial matters; namely preconceptions about disability and disabled people and their ability to marry and raise children. The judge's questioning of Mr Butt supports this conclusion. The judge concluded that a payment had been made by the Appellant to the Sponsor. The decision that this was a payment made by the Appellant to facilitate her entry to the UK was one that may have been open to him. There were other problems as found by the judge with evidence (including the lack of evidence from the Appellant and the unexplained payment of a large sum of money into the Sponsor's bank). However, I cannot conclude with any degree of certainty that had the judge not taken into account immaterial matters he would have reached the same conclusion.
9. The judge materially erred. I set aside the decision to dismiss the Appellant's appeal. The matter is remitted to the First-tier Tribunal for a *de novo* hearing. There are no preserved findings.

Notice of Decision

The appeal is allowed.

Signed Joanna McWilliam
Upper Tribunal Judge McWilliam

Date 28 January 2018