



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: PA/02733/2017
PA/02767/2017

THE IMMIGRATION ACTS

Heard at Field House
On 8 May 2018

Decision & Reasons Promulgated
On 25 May 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE HILL QC

Between

(1) RAJA [A]
(2) AYZER [N]
(ANONYMITY DIRECTION NOT MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Ms C Hulse, Counsel instructed by Gillman-Smith Lee Solicitors
For the Respondent: Mr I Jarvis, Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal from the decision of First-tier Tribunal Judge Fletcher-Hill promulgated on 4 December 2017. The two appellants, who were unrepresented before the First-tier Tribunal, are citizens of Malaysia who married on 24 May 2007.
2. Their immigration history can be briefly stated. They arrived with one holding a student visa and the other as a dependant. That situation was extended by further student and dependant visas; and in October 2015 an application was made for leave

to remain on the basis of ten year residency. This application was refused on 30 July 2016. Shortly thereafter, on 8 September 2016, both appellants made claims for asylum. This was refused by the Secretary of State on 24 February 2017, which led to the appeal to the First-tier Tribunal.

3. The judge's decision rehearses the issues which were to be determined. It is made clear at the outset that they concern asylum and not the ten year residency claim. This was expressly not entertained. Although this features in the grounds of appeal, it was made plain in the grant of permission that there was nothing wrong in the judge limiting the appeal to those matters which were properly in dispute.
4. The judge made clear findings and dismissed the appeal on asylum and humanitarian protection grounds and under the human rights considerations.
5. The grounds are lengthy and a little discursive. Much of the narrative is devoted to the ten year residence provisions but in substance the appeal comes down to three separate points as set out by First-tier Tribunal Judge Grant-Hutchison in granting permission.
6. The first concerned whether a comment on alleged deception in an English language test may have infected the judge's overall credibility findings. The second (pursued with less vigour by Ms Hulse in her oral submissions), was the possibility the credibility findings may also (or alternatively) have been infected by what the judge perceived to be an inconsistency between the second appellant's evidence in interview and that given in the First-tier Tribunal. The third related to the judge's findings that the first appellant's knowledge of the Hindu faith was "patchy to say the least". It is suggested that the manner in which the judge approached this matter was insufficiently grounded in reality as to the nature of the Hindu practice and belief, the manner of conversion into the Hindu tradition, and status of interfaith marriages in Malaysia.
7. Ms Hulse sought to develop the grounds of appeal by reference to the first appellant's interview record sheet which was apparently not disclosed until the day of the hearing. She points to the conclusion which indicates the appellant to be "not credible" for the following stated reasons:

"The applicant stated that her husband was forced to marry her and to convert to Islam which may be a reason for concern on this application. The applicant did speak very good English and seemed to have completed the English test in 2013. All other parts of her interview credible".
8. I do not consider a detailed forensic investigation into matters concerning the English language test to be necessary since, at best, it was of no more than peripheral to decision and was clearly not a key component of the judge's reasoning.
9. The determination, read holistically, is fair and balanced, properly taking all relevant matters into account. The findings start at paragraph 9.1 and continue to paragraph

9.16. The salient paragraph in relation to this first ground is at 9.12 which reads as follows:

“9.12 I also accept the credibility findings contained in the refusal letter of July 2016 and accept the well substantiated claims of the Home Office, that the first appellant used deception when taking her test in April 2013 and that the results were therefore cancelled. This subsequently led to a failure to meet the suitability requirements for leave to remain on the basis of her long residency application”.

10. The situation of this paragraph towards the end of the judge’s findings, and the fact that it begins: “I also accept ...”, make it sufficiently clear that the judge’s credibility findings had already been conclusively determined on the basis of other material. What is said at paragraph 9.12 is no more than a make-weight assertion in relation to credibility findings which had already been sufficiently made.
11. The judge in granting permission used the phrase “infected”, which was adopted by Ms Hulse in her submissions, also using also the synonym “tainted”. Any fair reading of this decision cannot support the proposition that there was any infection or cross-contamination. The passing reference to the credibility findings in the refusal letter and the Home Office’s view on the use of deception comes after a properly reasoned assessment and does not undermine the basis of the decision.
12. Related to the issue of credibility, Ms Hulse sought to open an additional area of criticism of the judge based on references to a complete lack of documentary evidence. Ms Hulse states that it would be surprising if there were documentary evidence of the appellants going to the authorities when, she says, their interfaith marriage was unlawful. The possibility of flawed conclusions stemming from the perceived absence of documentary evidence was not something raised in the grounds of appeal. There has been no application to enlarge or amend the grounds. However, even if I were to have given permission to amend the grounds to allow this additional matter to be pursued, I would not have found an error of law because the factual findings were clearly open to the judge on the evidence before her. The judge was perfectly entitled to comment on the absence of documentary evidence since that is part of the factual matrix within which the judge made her determination.
13. It is instructive to set out the express findings the judge:
 - 9.2 Having given careful consideration to the appellant's evidence, and having considered his evidence in light of the country evidence, I have found the core of the appellant's claim to be entirely lacking in credibility. I accept on the lower standard of proof, that the first appellant and her husband do indeed come from different religious backgrounds, and that they are Muslim and Hindu respectively. However, I do not find it likely that this has resulted in the continuing difficulties that the appellants claim given over ten years ago the second appellant converted to Islam and married his wife and that the first

appellant's father-in-law has financially supported her studies in the UK as recently as when he offered sponsorship in 2010.

[...]

9.5 I find that their situation as a married couple, for over a decade, is now fundamentally different and there is no credible evidence to support any claim that they would be at risk from either family on return.

[...]

9.8 I also find that the second appellant has not made out his claim that his own family have disowned him and indeed whereas there is evidence of continuing financial support in the form of sponsorship, there is no evidence to suggest that he has otherwise been disowned by them”.

9.9 I also do not find it reasonably likely that the appellant has been threatened by his wife’s family, given the lack of any documentary evidence to substantiate any such events.

9.10 In relation to the first appellant's asylum claim, I do not find her a credible witness in relation to her conversion to Islam. Her knowledge of that faith was patchy to say the least and, although she claims to have been subjected to attendance at a rehabilitation centre over a decade ago, again there is no documentary evidence to substantiate this claim and in any event her husband has since converted to Islam.

9.11 In relation to my credibility findings, as stated earlier, I do not find either witness to be credible and I do not accept that the first appellant is at any risk from the authorities upon return to Malaysia, in fact this is evidenced by the fact that she did return using her own passport, in 2011, without any problems arising from the authorities. I further reject the claim that she or her husband would suffer any harm at the hands of her family, who are aware that they have been married since 2007 and that her husband has converted to Islam”.

14. I can deal very briefly with the third ground, namely the finding of patchy knowledge of the first appellant regarding her Hindu faith. What is said in the grounds and what has been submitted by Ms Hulse is that Hinduism is not like Christianity where converts are required to learn the Bible and go through initiation by baptism. There may well not be a Hindu catechesis, as found in many Western religions, but the judge assessed on the evidence the merit or otherwise of the claim brought by the first appellant, and came to clear conclusions as she was entitled to do. There is no error of law here.

15. Finally, and out of numerical order, I turn to the second ground, regarding an inconsistency between the second appellant’s evidence at the hearing and the answers he gave at interview. Ms Hulse did not pursue this in her oral submissions, and I consider she was wise not to do so. I can see nothing to suggest any misapprehension on the judge’s part which may have affected, still less infected, her credibility or factual findings.

16. I remind myself that under section 12 of the Tribunals, Courts and Enforcement Act 2007, if the Upper Tribunal finds that a First-tier Tribunal decision involved the making of an error on a point of law, it “may (but need not) set aside the decision”. Even had I been of the view that one or more of the grounds might have amounted to an error of law, I would not have set aside this decision. Read carefully and holistically, the decision is robust and patently sound. I find it difficult to conceive of how the judge could have reached any other conclusion. For all of those reasons I dismiss this appeal.

Notice of Decision

Appeal dismissed.

Signed *Mark Hill*

Date 15 May 2018

Deputy Upper Tribunal Judge Hill QC