



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

Appeal Number: HU/04561/2019

THE IMMIGRATION ACTS

**Heard at Birmingham
On 1st October 2019**

**Decision & Reasons Promulgated
On 7th January 2020**

Before

DEPUTY UPPER TRIBUNAL JUDGE MAHMOOD

Between

**BIN YAMEEN SHAIK DAWOOD
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Litigant in Person

For the Respondent: Ms H Aboni, A Senior Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant appeals with permission against the decision of First-tier Tribunal Judge M Butler in respect of a human rights, Article 8 appeal. The Appellant was originally represented by Messrs Bhavsar Patel Solicitors, but he was unrepresented today. This matter had previously been listed before Upper Tribunal Judge Norton-Taylor but it had to be adjourned. Judge Norton-Taylor having observed that the Appellant had a certain command of English but not sufficient to enable him to present his case. An interpreter was required but was not available at that hearing. It was also noted that the Respondent's representative at that hearing was not able to concede that there was an error of law.

2. At the hearing before me today, I checked that the Appellant and the Mauritian Creole interpreter understood each other and I then proceeded with the hearing.
3. Permission to appeal had been granted in this case by First-tier Tribunal Judge EM Simpson. In doing so she had observed in summary that:
 - (i) It was materially arguable that there was an error of law when assessing family life ties of the Appellant with his wife and two children, more especially with the younger son then still a minor and whether those ties were genuine and subsisting. The Respondent had not appeared at the hearing but had not put in issue the Appellant's identity. If identity was a matter of judicial concern in the assessment of credibility of the witnesses at the hearing then this should have been raised with the Appellant and his Counsel at the hearing. The Appellant was arguably deprived of an opportunity to address the Judge's concerns;
 - (ii) The Judge properly alerted the Appellant to prompting his wife when giving evidence, but the wife's hesitancy was just as likely to have been nervousness;
 - (iii) There was a matter of a *Robinson* obvious issue in respect of the "lack of corroborating ... evidence of place of residence". The Appellant's IS96 and Home Office reporting conditions showing the family address and sight of such documentation did not appear fairly to have been raised at the hearing.
4. In his submissions in respect of the error of law, the Appellant said that he had come to the UK in 2005 and had been here for the past 14 years. He said his children had missed him a lot. He said he was now aged 55 and would like to stay happily with his family and his 2 boys. He said he did not know why he had not been allowed to stay in the UK. He said he did not have a criminal record and there was "nothing on the police file". He pointed to his wife and children who were at the back of the court. He was upset and asked, "What more proof do you need?". He said they had just moved to a new house and only of his children works. He said his wife was "not that educated" and she was not able to find a job. He said I should grant him permission to appeal as he did not know how long he had to live.
5. In her submissions Ms Aboni said that the Appellant's representative's written grounds of appeal were an attempt to re-argue the appeal. She said that the Judge had directed himself appropriately and had given adequate reasons for his findings. The Appellant did not have a genuine and subsisting relationship with his partner or his children. The grounds of appeal argued that there was unfairness in the hearing in respect of the doubts about the relationship and the Judge had noted the issues in the Respondent's case and this was dealt with at [15]. In so far as the documents produced today are concerned, there is one in respect of the Court in Mauritius and the change in name but it post-dates the decision of

the Judge and is self-serving. Even if there was an error of law in the Judge's decision because the Judge had not put it to the Appellant, it was not material because the Judge had gone on to consider all of the evidence relating to the relationships and the best interests of the children in reaching his conclusion. The Appellant was prompting the wife and only one of the children is a minor. The Judge dealt with the evidence before him. The Judge was entitled to consider the evidence in respect of reconciliation with the wife. As for the lack of "corroborative" evidence and whilst this is not always necessary, there was evidence which could easily have been placed before the Tribunal. For example, from the sons but there was no statement from them. The Judge was entitled to find that the account was fabricated. In respect of s117 adequate reasons were given.

6. Despite Ms Abon's helpful submissions, I conclude that there is a material error of law in the Judge's decision. The reasons that I come to this decision are as follows.
7. Firstly, the Judge raised an issue in respect of the marriage of the Appellant and his wife. The reason that there were two dates was because one was the religious marriage (Nikah) and the other was the registration of the marriage. This is relatively common. This issue, if raised at the hearing, could have been dealt with by the Appellant or his wife. This raises issues of fairness at the hearing.
8. Secondly, the issue in respect of the names should also have been specifically raised by the Judge at the hearing. The same issues of fairness arise. In any event though the Appellant's name appears on the children's birth certificates. Importantly the Respondent's refusal letter accepted that the Appellant was the father of both children. Therefore, it is not clear to what end the Judge's finding left the case.
9. Thirdly, the real issue in respect of the case raised by the Respondent was the strength, if any, of the relationship between the Appellant and the rest of his family. Whereas the Judge had very much focused a new strand to the case. Namely whether the Appellant was the same person referred to within the documentation and whether the marriage was itself genuine. Had the Judge focused on the actual issues raised by the Respondent he may well have come to a different decision. The issues in respect of the Appellant's wife's evidence being affected by nervousness is an additional factor, but not a decisive one. It reflects the difficulties which arise when the Respondent is not represented at a hearing and when the Judge has to attempt to deal with issues on his own without the assistance of a Home Office Presenting Officer. The Judge's conclusions were tainted by his earlier findings.
10. In my judgment, it is clear that this new focus of the case should have been raised specifically by the Judge at the hearing. More so since the Respondent was not represented at the hearing. It was unfair for the Judge to make the findings that he did without clearly and specifically putting the

new points to the Appellant, his witness and his Counsel. Similarly, seeking corroboration was to seek too much.

11. It is clear that the foundation for the Judge's findings led to adverse credibility findings. I conclude that those findings are unsafe.
12. As there has not been a fair hearing, the appropriate step is for there to be re-hearing at the First-tier Tribunal. None of the current findings shall stand. It will be a 'de novo' hearing.

NOTICE OF DECISION

There is an error of law in the decision of the First-tier Tribunal. The decision is set aside.

There will be a re-hearing on all issues at the First-tier Tribunal.

Signed: A Mahmood

Date: 01.10.2019

Deputy Upper Tribunal Judge Mahmood