



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM
CHAMBER

Case No: UI-2023-002262

First-tier Tribunal No:
EA/08989/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 6th of October 2023

Before

DEPUTY UPPER TRIBUNAL JUDGE ALIS

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MR ALI IMRAN
(NO ANONYMITY ORDER MADE)

Respondent

Representation:

For the Appellant: Mr Tan, Senior Home Office Presenting Officer

For the Respondent: Represented by the Sponsor, Zehra Khan

Heard at Manchester Civil Justice Centre on 19 September 2023

DECISION AND REASONS

1. Whilst it is the Respondent who is seeking leave to appeal today, I have hereinafter referred to the parties as they were identified in the First-tier Tribunal. Mr Ali Imran will be referred to as the Appellant and the Secretary of State for Home Department will be referred to as the Respondent.
2. The Appellant is a national of Pakistan, date of birth 1 October 1977, who on 19 March 2022 applied for a family permit as the unmarried partner of

an EEA national, Zehra Khan. The Respondent refused his application in a decision dated 20 September 2022 because:

- a. The Respondent was not satisfied the Appellant had provided any evidence that he and the sponsor were in a durable relationship.
 - b. The Respondent noted that the Appellant and sponsor had not lived together for 2 years prior to the specified date of 31 December 2020.
 - c. The Respondent states that the documentary evidence provided by the Appellant is insufficient to prove the Appellant and sponsor were in a durable relationship and did not amount to other significant evidence of a durable relationship.
3. The case was listed before Judge of the First-tier Tribunal Prudham (hereinafter referred to as the FTTJ) via CVP on 3 March 2023 who subsequently allowed the Appellant's appeal under the Immigration Rules.
 4. The Respondent applied for permission to appeal arguing the FTTJ had erred by failing to make findings, take into account matters or provide adequate reasons.
 5. Permission to appeal was granted by Judge of the First-tier Tribunal Lester on 5 June 2023 who found the grounds arguable. The permission stated:

"2. The grounds raise a number of issues which include that the judge erred in that they:

 - (1) The sponsor states she married the appellant in Pakistan in an Islamic marriage on 14 July 2018, where the paperwork showed her as unmarried. However, at that time she was still legally married in the UK.

The UK marriage only received an Islamic divorce on 11 August 2018, and the marriage only received a Decree Absolute on 9 December 2019. The Respondent notes that when questioned on this the Appellant stated the UK marriage had not been registered in Pakistan. In the findings the Judge referred to this as an oversight. The Respondent contends that the Judge erred on this.

 - (2) Separately the Respondent states the Judge erred in their findings about a durable relationship.
 3. If the Respondent is correct then an arguable error of law is disclosed and permission to appeal is granted."
 6. Mr Tan adopted the grounds of appeal and the grant of permission and invited the Tribunal to find there had been an error in law. He submitted that at the hearing it was put to the Sponsor that there was a discrepancy between what the Appellant and Sponsor had claimed about the sponsor's

marital status with the marriage certificate stating they were unmarried whereas the Sponsor accepted at the date of her marriage to Appellant she was still married and only received an Islamic divorce on 11 August 2018, and a Decree Absolute on 9 December 2019. The FTTJ had noted this was a matter of concern but then failed to factor this into his/her assessment of whether the Appellant and Sponsor were in a durable relationship. Additionally, whilst the FTTJ considered the evidence of their relationship he/she failed to give reasons how the evidence presented amounted to significant evidence of a durable relationship for a period of two years before 31 December 2020 and continuing at the date of application.

7. Ms Khan opposed the application and explained that she had told the Pakistani authorities she was unmarried because she did not realise she needed to tell them about her UK marriage. She reiterated what she had argued before the FTTJ namely they were in a durable relationship and that she had sent the Appellant money regularly and whilst at the date of application their visits had been limited this was in the main due to Covid and the fact she was unable to travel in 2020 or 2021 and also because she could only ever take two weeks holiday. She opposed the application.
8. I am grateful for Mr Tan who provided me with correct copies of the First-tier bundles as the bundle I had been provided with mostly consisted of papers relating to a different and unrelated case.
9. No anonymity order was made.

DISCUSSION AND FINDINGS

10. This appeal is based on the Respondent's grounds of appeal as set out in paragraph [2] above. The application was opposed by the Appellant who was represented by the Sponsor. For the reasons hereinafter provided I found there was no error in law.
11. The issues in this appeal are outlined above. On their own evidence the Appellant and Sponsor had lived together between November 2018 and March 2019 (four months) and for a total of thirty-three days in Pakistan in 2018 and 2019. The explanation for a lack of direct contact was two-fold namely covid and the fact the Sponsor could only take two weeks holiday at a time. The FTTJ was aware of this evidence when considering the appeal.
12. The FTTJ noted the Sponsor and Appellant not shown they had lived together in a relationship akin to marriage for two years prior to 31 December 2020, but then went on to consider whether the Appellant and Sponsor had provided significant evidence of their durable relationship. Mr Tan has argued the evidence that was before the FTTJ did not meet the level necessary.

13. There is no statutory definition of what amounts to significant evidence of a durable relationship, but the Respondent's own guidance suggests the case worker look at-

"... evidence of joint responsibility for a child (a birth certificate or a custody agreement showing they are cohabiting and sharing parental responsibility), evidence of shared financial responsibilities or business ventures, or evidence of regular communication and visits while living apart alongside definite plans concerning the practicalities of living together in the UK."

14. The FTTJ examined the evidence between paragraph [17] and [23] of his/her decision and noted the following:

- a. I accept that there is a discrepancy in the Islamic marriage certificate. This refers to the sponsor as unmarried, when in fact her divorce had not been finalised. The sponsor was unable to offer any explanation for this, other than it would appear to have been an oversight.
- b. The Appellant and Sponsor do not have any children. However, the Appellant did provide evidence of co-habitation.
- c. In addition, the Sponsor states she has travelled to see the appellant in Pakistan and she also sends him money.
- d. Mobile phone communications between the appellant and sponsor were evidenced. These however were, for the main, untranslated and so this affected the weight I could place upon the mobile phone communications.

15. The FTTJ then concluded "many of the factors referred to in the Home Office guidance are met by the appellant and sponsor. They have provided evidence of regular communication and visits. In respect of the visits, I take account of the restrictions on travel that were imposed during 2020/2021 due to Covid 19. The Appellant has also provided documentary evidence of residence with the sponsor whilst in the UK. There is evidence of financial support as well. I also take into account that the respondent has previously granted the appellant an EEA Family Permit to enter the UK. It seems strange that an EEA permit was granted but an EUSS permit refused."

16. Mr Tan sought to persuade me that the inconsistency on the marriage certificate undermined the question of a durable relationship. I disagree with him on this issue because at no point has it been suggested this marriage did not take place and the decision letter did not suggest it was entered into to circumvent the Immigration Rules.

17. It was agreed the Appellant or Sponsor could not show they had been together for two years prior to 31 December 2020 and they therefore had

to rely on demonstrating there was significant evidence of a durable relationship. The relevant date is the date of application, and it was incumbent on the Appellant and Sponsor to provide this evidence.

18. Having gone through the bundles I found there were limited money receipts before the FTTJ. There was a receipt for July, September (possibly two), October and December 2021 (possibly four) and then January 2022. It had been the Sponsor's evidence to the FTTJ that she had been sending him money since they married in July 2018 but as evidenced above there were no receipts before the FTTJ for the period July 2018 to June 2021 which is a period of three years. However, it should not be overlooked the Appellant and Sponsor lived together between November 2018 and March 2019 so there would be a lack of money receipts for that period. The current application was lodged in March 2022. There was evidence that the Appellant had previously applied on 9 December 2020 and 1 June 2021. This would have been known by the FTTJ.
19. The Appellant had been issued with a family permit which enabled him to spend November 2018 and March 2019 with the Sponsor. He then returned to Pakistan and there had been no more direct contact until after the date of application. Prior to those days there was a total of 33 days when the Sponsor stated she was with the Appellant. It could not be disputed their ability to be together was affected by (a) Covid and (b) refusal of applications. The FTTJ quite properly took these factors into account as well as evidence that no visits were possible between 2020 and 2022. The FTTJ would also have taken into account their attempts to be together.
20. The final piece of evidence considered by the FTTJ related to contact by mobile phone. The FTTJ noted that some of this evidence had not been translated and the weight to be attached to this would clearly be affected. However, what was translated clearly demonstrated an ongoing relationship.
21. With the exception of a lack of money receipts there does appear to be evidence to support the FTTJ's finding there was a durable relationship.
22. The FTTJ had the opportunity to consider the totality of the evidence including the oral evidence given by the Sponsor. The FTTJ was satisfied the Appellant and Sponsor had seen each other and attached weight to the fact the Respondent agreed the Appellant should be issued with a family permit in 2018. To do that she must have been satisfied about the relationship itself. The mobile phone communication is something that can be considered as much of it is translated into English. Their explanation for not being together was considered reasonable by the FTTJ. For the reasons given earlier I do not find the error on the marriage certificate impacts on the FTTJ's decision.

23. The FTTJ was satisfied there was significant evidence of their durable relationship and that this outweighed any concerns that arose from the marriage certificate.
24. On the evidence presented I am satisfied the FTTJ was entitled to make the findings he/she did and consequently there is no error in law.

Notice of Decision

The decision of the First-tier Tribunal did not involve the making of an error on a point of law. The decision is upheld.

Deputy Judge of the Upper Tribunal Alis
Immigration and Asylum Chamber
28 September 2023