



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/43272/2013

THE IMMIGRATION ACTS

Heard at Bradford
On 17th June 2014

Determination Promulgated
On 10th July 2014

Before

UPPER TRIBUNAL JUDGE D E TAYLOR

Between

MASHUKUR RAHMAN

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mrs Murshed of Counsel instructed by Eden Law
For the Respondent: Mrs Pettersen, HOPO

DETERMINATION AND REASONS

1. This is the Appellant's appeal against the decision of Judge Hillis made following a hearing at Bradford on 20th February 2014.

Background

2. The Appellant is a citizen of Bangladesh born on 5th January 1982. He first entered the UK on 3rd September 2008 with leave valid to 21st July 2010 following an allowed

appeal for entry clearance as a working holidaymaker. He subsequently applied for leave to remain on the basis of enabling him to participate in access rights to his child and was granted discretionary leave until 1st April 2013. On 28th March 2013 he was granted a further three month period of discretionary leave valid to 1st August 2013.

3. The subsequent decision to refuse further leave was the decision before Judge Hillis, which he wrongly characterised as an application refused under paragraph 322(1). In fact it was refused under Appendix FM of the Immigration Rules and Rule 276ADE with respect to private life in the UK.
4. Ms Murshed accepted that the error was immaterial because the Appellant could not meet the requirements of the Rules in any event and the sole issue was whether the judge erred in law in his assessment of whether there would be a breach of the Appellant's family life under Article 8 outside the Immigration Rules.
5. In January 2011 the Appellant contracted an Islamic marriage to Mrs Begum, and on 23rd November 2011 the couple's baby daughter was born. There is no issue that the marriage is not valid in English law. Mrs Begum was still at that time legally married to her first husband.
6. It is not disputed that the relationship between the Appellant and Mrs Begum subsequently broke down and they separated, hence the application for discretionary leave in order to exercise access rights to his daughter.
7. The Appellant's application for access rights was initially refused but upon appeal, allowed on 27th June 2012 in order to enable the Appellant to participate in access proceedings regarding his daughter. The judge on that occasion found that the marriage had broken down and that Mrs Begum had returned to live with her sister in London with their daughter. She was persuaded on the evidence before her that,
 - (i) "There was no prospect of reconciliation although the Appellant said he had tried through family members to bring the reconciliation about."
8. Mrs Begum made an application for indefinite leave to remain in the UK which had been refused on 16th September 2010 and at the date of the hearing before the judge her leave to remain was about to run out. However on 11th April 2014 she was granted a further period of discretionary leave to remain. The reason for the grant is unclear. Mrs Pettersen said that the Home Office file stated that it was on the basis of the present Appellant having become naturalised as a British citizen in 2011 but in any event, since the grant of leave was made after the judge's determination, it is not relevant to the issue of whether he erred in law.
9. It was claimed before Judge Hillis that the parties had in fact reconciled and that the marriage was subsisting and they were living together. The couple started to live together again in October 2013. The Appellant produced a bundle of documents which, it was said, established that they were living at the same address, including bank statements, letters from HM Revenue & Customs, wage slips and doctors' cards.

10. Judge Hillis said that he had read all the documents and taken them into account when reaching his decision.
11. He heard oral evidence from both the Appellant and from Mrs Begum. He found that their evidence was discrepant, particularly in relation to a demand by Mrs Begum of a payment of £10,000 as a gift without which she would not reconcile with him.
12. The judge said it was clear from the evidence that both Mrs Begum and the Appellant understood that the other was in the UK legally and that this was a significant reason for their agreement to marry. The Appellant was under the impression that Mrs Begum had indefinite leave to remain and not that her application for status had been refused. He said that both parties were primarily concerned with the immigration status of their prospective partner and he noted that Mrs Begum said that she would not return to Bangladesh under any circumstances which in his judgment illustrated that there was no persuasive evidence of a true reconciliation between the parties.
13. There was no persuasive evidence that it was in the best interests of the child to stay in the UK rather than to travel back to Bangladesh (he erroneously stated Pakistan) because the child was still of an age where she had no real knowledge of life in the UK and would be able to adapt.

The Grounds of Application

14. The Appellant sought permission to appeal on the grounds that the judge had failed to take into account relevant evidence on the issue of whether the Appellant and Mrs Begum had genuinely reconciled and had taken into account irrelevant matters.
15. It was unreasonable to take the previous determination as his starting point because the previous judge was assessing the current state of the relationship on the evidence but was in no position to determine whether there would be reconciliation in the future. The judge ought to have approached the issue on the evidence before him. It was clear from a letter sent from Cadman Solicitors to Solace Women's Aid dated 31st January 2013 that the couple wished to reconcile. There was a formal consent order in the Bradford County Court in relation to the access proceedings which stated,

“Upon the parties having reconciled so that they are now living together with the child M N,”

and with numerous letters showing that the couple were now living at the same address. Instead of scrutinising the evidence the judge focused on reasons why the couple got married and inconsistencies in their evidence, and their attitude to their immigration status when they got married was wholly irrelevant to the issue of whether they were now in a subsisting relationship. This was an arranged marriage and the couple would not have known as much about each other as one who embarked on a relationship before marriage. Furthermore the fact that Mrs Begum

was unwilling to return to Bangladesh did not mean that the reconciliation was not genuine.

16. Finally the judge did not take into account the best interests of the child. Since October 2013 M N had been seeing her father on a daily basis and there had been no real assessment on the impact on her were the Appellant to return to Bangladesh.

Submissions

17. Mrs Murshed relied on her grounds and submitted that the determination was flawed for the reasons set out in them.
18. Mrs Pettersen defended the determination and said that the judge had heard oral evidence from both witnesses. He was clearly unhappy with much of that evidence and many of his findings had not been challenged. He was concerned with the nature of the reconciliation rather than the fact that the couple were living under the same roof and was entitled to decide that there was no family life between the couple.

Findings and Conclusions

19. The lack of detailed reference to the documentation renders this determination vulnerable to appeal. There was clear evidence in those documents which showed that the couple were cohabiting. Nevertheless the judge stated that he had taken the documents into account when reaching his decision and there is no basis for finding that he did not do so.
20. The issue before him was, in any event, not whether the couple had recommenced cohabitation but whether the reconciliation was genuine. In reaching the conclusion that it was not he was perfectly correct to take as his starting point the view of the previous judge which was that there was no prospect of reconciliation. Clearly that was an assessment made at the time of that hearing and matters might have changed, but it was his starting point.
21. The judge then did consider the evidence as to whether there had been such a change. The motivation behind the marriage was a relevant matter for him. It was clear to him that Mrs Begum understood that he had a legal basis of stay in the UK when the marriage was arranged and, since she had expressed a strong desire not to return to Bangladesh, the inference that the couple were attempting to use what they thought was the other's immigration status to stay in the UK was relevant to the question of whether the reconciliation was genuine.
22. Moreover the Appellant's evidence was that his wife had demanded £10,000 as a gift as a condition of reconciliation, although the reconciliation had in fact taken place without the payment. That evidence is supportive of the judge's conclusion that there was no genuine reconciliation.

23. So far as the best interests of the child are concerned, she would be returning to the country of her nationality with her parents and the judge was entitled to find that it would be in her best interests to do so. No evidence to the contrary appears to have been put before him. At the date of the hearing the child's mother's leave was about to expire. Neither of the parents therefore had any basis to stay in the UK. In the circumstances there can be no error in the judge finding that it was in the child's best interests to be in her country of nationality with her parents.

24. The decision is sustainable.

Decision

The judge did not err in law and his decision stands.

Signed

Date

Upper Tribunal Judge Taylor