



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

Appeal Number: IA/10739/2014

THE IMMIGRATION ACTS

Heard at Field House

On 3 June 2015

**Decision & Reasons
Promulgated
On 11 June 2015**

Before

**UPPER TRIBUNAL JUDGE McWILLIAM
DEPUTY UPPER TRIBUNAL JUDGE RAMSHAW**

Between

**MRS SAVITA BHARMOTRA
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr H Kannangara, Counsel instructed by Visa Expert Ltd
For the Respondent: Mr P Nath, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of India and her date of birth is 17 August 1979.
2. The appellant made an application for a residence card under the Immigration (EEA) Regulations 2006 ("the 2006 Regulations") as the spouse of an EEA national exercising treaty rights. On 30 July 2013 the appellant was married to a Spanish citizen, Gurpreet Virk Kaur. The application was made on 26 September 2013.

3. The application was refused and the appellant appealed. Her appeal was dismissed by Judge of the First-tier Tribunal Malins in a decision which was promulgated on 19 November 2014 following a hearing at Hatton Cross on 6 October 2014. The appellant was granted permission to appeal by Upper Tribunal Judge Eshun on 23 April 2015.

The Decision of the First-tier Tribunal

4. The judge heard evidence from the appellant, the sponsor and Jaswal Rahman. Before her there was the report by Immigration Officer Kenneth Muir relating to a visit he had made to the appellant's address following the application. The officer's evidence is that he was let into the address by Varinder Singh. He asked Mr Singh whether he could speak to the appellant and the sponsor. He was shown the room which he was told the appellant and the sponsor inhabited, but it was locked and the officer was told by Mr Singh they were at work. The officer indicated that he was aware that somebody was in the room. Before having entered the property he saw that the lights were on and he noted that curtains had been pulled shut after he had knocked on the door. However, the occupant would not open the door and allow him access. In the Officer's opinion the sponsor was in the room and it was not clear whether the appellant lived there. At the property the officer met Jaswal Rahman, who identified himself as the sponsor's cousin.
5. The judge made the following findings:

"14.1 I did not find the appellant to be a credible witness for myriad reasons, touching every aspect of this appeal and going to the heart of its key issue – the nature of the marriage. I shall break down the main reasons for the appellant's lack of credibility, into categories of evidence:

14.2 Dishonest Evidence

- (a) I reject the appellant's evidence upon the Christmas tree lights lighting her bedroom, which was repeated by Gurpreet Virk Kaur and in February, seems inherently unlikely. Had there been Christmas tree lights on only in the room and the curtains crossed over them before the Immigration Officers' arrivals then, the light given out would have been insufficient to warrant the Immigration Officer's description '*all the lights were on in the room.*' I note his use of the plural and the clear implication that the room was well lit. Nor would this situation warrant the officer's unequivocal statement '*the curtains had been pulled close shut after we knocked.*' These observations – which I accept from the Immigration Service – are wholly inconsistent with the bedroom being unoccupied, locked and the two parties to the marriage both departed for work;
- (b) I also reject the detailed account in both the appellant and her husband's statements that Varinder Singh telephoned the appellant to ask about breaking the lock and that the Immigration Officer declined to do this in order to inspect the room, when the appellant had consented. There is no reference in the

Immigration Officer's statement to a discussion about the breaking of the lock: rather, his account is that he knocked on the door to obtain permission to enter from a person inside, having '*heard movement and a voice came from the room*' – already aware that it was occupied, due to the lighting observed from outside the house and the action of the closing of the curtains;

- (c) Towards the end of her oral evidence, the appellant was asked by me, about her employment. Her answer verbatim was '*no, I don't work: I don't have permission.*' Yet the appellant had produced a letter from Sainsburys giving her shift hours as 5am to 9am on 11th February 2014. She will have had no permission to work then either. This was not an honest response to the question;
- (d) In her application form, asked to describe her 'ties' with the country of which she is a national, the appellant wrote '*India – All ties broken.*' Yet she had been in the UK for five years at the time, out of the 34 of her life. She had therefore lived 29 years in India – been a child there, been a teenager there, spent all her 20-somethings there and been to school there. How could she have severed all connections with her mother, father, siblings, grandparents, uncles, aunts, nephews and nieces (undoubtedly, she will have most of these) and friends together with organisations in her native land? The appellant's parents will have had to fund the appellant's college place and accommodation in the UK to the ECO's satisfaction, before her 2008 visa was granted: they will not be poor. I reject the appellant's sweeping statement as dishonest;
- (e) I find that the appellant never had the intention of studying in the UK and that her application for a visa to do so, was accordingly dishonestly obtained. Not only did the appellant give up on her course with no struggle or plan to undertake something easier, but nowhere in her statement or evidence, is there a single reference to her career plan in coming to the UK, wish to study or regret at dropping out nor indeed, a plan for any alternative. Also, there is no letter or document from the college in question, showing failed examinations to demonstrate that the appellant was not *ab initio*, an economic migrant wishing to procure settlement in the UK through any means and had employed a student visa for this purpose;
- (f) The appellant's overall honesty is not assisted by the total absence of any account explaining her life in the four years between her arrival in the UK '*as a student*' and her moving in with the man she married in 2012/2013. In which country was she living and for which years? On what funds was she living? What was she doing in the UK?
- (g) The serious discrepancies in the evidence given upon the genesis of the marriage, undermines the appellant's credibility further: it is inconsistent with a genuine proposal, that the appellant states that she accepted it after one or two months' thought and consultation, yet the husband states that she gave her answer '*the next day.*'

14.3 **The Nature of the Marriage**

Despite my having a copy of only the right half of the marriage certificate, I accept that a ceremony was gone through. However, I find the resulting marriage to be not a genuine marriage within the usual meaning of that phrase – between two committed people, who love each other and wish to spend the rest of their lives together, in these circumstances:

- (a) To the contract clearly did not carry the usual significance, or both parties would have remembered the happy day when they agreed to marry (see 14.2(e) above);
- (b) The union is palpably cold:
 - (i) Neither party buys a gift for the other on any occasion, not even a card. This is not a cultural matter but one of inclination in my judgment;
 - (ii) The couple do not go out together ever – save once to the Gurdwara in Gravesend which entailed eating out (it is some distance away) or to the shops nearby – as housemates often deportation order
 - (iii) Neither party to the marriage uses any phrase implying affection or attachment in their witness statement;
- (c) The wedding itself was functional:
 - (i) The groom's parents did not bother to attend despite being only on the other side of the Channel an hour and a half's flight away and the wedding taking place adjacent to the airport;
 - (ii) The reception consisted of three persons eating in a restaurant – bride, groom and her uncle;
 - (iii) The bride had no friends/bridesmaids present, nor did she carry any flowers;
 - (iv) Crucially and this is of significance: neither the groom's cousins, housemates, nor a single friend of the groom, bothered to attend. Even the person 'supporting' the groom for marriage purposes, was one of the two guests provided by the appellant. In short, the groom went to his wedding alone and incidentally, without even a jacket, still less, a buttonhole.

14.4 The Credibility of the Other Two Witnesses

- (i) Above, there are references to the want of credibility of Gurpreet Virk Kaur in 14.2(a), (b) and (g). As to the evidence of Jaswal Rahman, I do not find it truthful. This person clearly wishes to support his friend although I note, this feeling did not prompt him to attend the wedding. No doubt he understood its lack of significance. However, the significance of the appeal hearing, is infinitely greater."

Conclusions

6. The grounds of appeal are insufficiently particularised and there is significant overlap. The main challenge is that the judge did not take into

account letters from the appellant and the sponsor's respective employers (at F1 and J1 of the appellant's bundle) which establish that they were at work when the Immigration Officer attended the premises. The judge accurately lists the evidence that was submitted with the application at paragraph 4 of the determination. She refers to the letter from the appellant's employer at paragraph 14.2(c) of the determination. The judge did not make any reference to the letter of employment relating to the sponsor. She did not make findings about whether or not the appellant and or the sponsor were at work at the time of the visit or whether the sponsor was in the locked room as suspected by the Immigration Officer.

7. The purpose of the letters was to support the appellant's case that she and the sponsor were working at the time of the visit and therefore they were not at the premises. The appellant's appeal turned on credibility and the judge preferred the evidence of the Immigration Officer to that of the appellant, the sponsor and the witness. It is obvious that the judge took into account the evidence from the appellant's employer and indeed there is nothing in the decision which would suggest that she did not accept that at the date of the visit the appellant was indeed working in Sainsbury's. It was not necessary for her to make a finding in relation to this because it was not material to the decision.
8. The Immigration Officer was of the view that the sponsor was locked in the room at the time of the visit; however, his evidence is not conclusive on the matter and the judge did not make a specific finding on the point. In our view whether or not the sponsor was at the address at the time of the visit was not material to the outcome of this case. The evidence in the report is that the room the appellant and the sponsor were said to occupy was locked and the officer could not gain access. This in itself is not suspicious. What was suspicious is that according to the Immigration Officer there was someone inside the room and he gave reasons for this. It is clear that the judge accepted this evidence. She was entitled to and her decision is reasoned on the point. It is immaterial whether the occupant who refused to open the door was the sponsor, as suspected by the Immigration Officer, or another person. Either way would give rise to suspicion and is no assistance to the appellant. If the judge failed to take into account the letters (rather than simply considering them to be immaterial) we do not consider that this amounts to an error of law. In any event, it is not material.
9. The judge found that the appellant had been dishonest because at the date of the hearing she said that she was not working because she does not have permission to work and that this was at odds with the letter from Sainsbury's stating that she had been working on 11 February 2014. It was not evidence before the First-tier Tribunal, but the grounds assert that the appellant had ceased working as a result of the decision as she no longer had permission to work and it was not open to the judge to make an adverse credibility finding on this point. We note that the issue was not raised in re-examination by the appellant's representative. In any event, it may well be the case that the appellant had legitimately ceased to work as

a result of the decision; however, in the context of the evidence as a whole and the extensive adverse credibility findings made by the judge we do not find that this amounts to a material error of law.

10. It was open to the judge to take into account the appellant's immigration history in the UK and the lack of evidence relating to her life generally here since she arrived. These are issues which are clearly relevant to credibility.
11. The judge gave adequate reasons for concluding that the appellant, the sponsor and Mr Rahman were not credible. Considering the findings as a whole we do not accept that the judge assessed credibility simply on the basis of the lack of material gifts and affection between the parties. However, these were factors which she was entitled to take into account when considering the evidence as a whole. Her findings in this respect were not determinative of the outcome. If the appellant and the sponsor do not "believe in material things" or the appellant was depressed which may have resulted in the lack of ceremony and gifts or cards between the parties this evidence should have been put before the First-tier Tribunal.
12. In our view the grounds amount to an attempt to reargue the case and a disagreement with the findings of the First-tier Tribunal which we find were open to the judge and are lawful and sustainable.
13. The appeal is dismissed.

Notice of Decision

The appeal is dismissed.

Signed Joanna McWilliam

Date 8 June 2015

Upper Tribunal Judge McWilliam