



IAC-AH-CO-V1

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

Appeal Number: IA/35232/2014

**THE IMMIGRATION ACTS**

**Heard at Centre City Tower, Decision & Reasons Promulgated  
Birmingham  
On 23<sup>rd</sup> October 2015**

**On 3<sup>rd</sup> November 2015**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE JUSS**

**Between**

**MR UMER SHAHZAD  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr Imran Hussain (Solicitor)

For the Respondent: Mr David Mills (Senior HOPO)

**DECISION AND REASONS**

1. This is an appeal against a determination of First-tier Tribunal Judge Asjad, promulgated on 22<sup>nd</sup> December 2014, following a hearing at Birmingham Sheldon Court on 2<sup>nd</sup> December 2014. In the determination, the judge dismissed the appeal of Mr Umer Shahzad, who subsequently applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

## **The Appellant**

2. The Appellant is a male, a citizen of Pakistan, who was born on 18<sup>th</sup> August 1991. He entered the UK on 26<sup>th</sup> May 2013 on a Tier 5 (Charity) Migrant visa that was valid to 13<sup>th</sup> June 2014. He then had an Islamic marriage ceremony on 1<sup>st</sup> September 2013 with Miss Summiyah Kousar, and a civil marriage on 7<sup>th</sup> November 2013. His current appeal arises from his application for leave to remain in the UK as the spouse of a settled person being made on 7<sup>th</sup> June 2014. The decision letter challenged is dated 21<sup>st</sup> August 2014.

## **The Appellant's Claim**

3. The Appellant's claim is that he satisfies both the financial requirement's test and that his marriage is genuine and subsisting. Both matters were in contention as far as the Respondent authority was concerned.
4. First, the employment could not be substantiated with the Hasrat Bahu Trust because there was no evidence of the Sponsor's previous employment with them and no letter of support from them in accordance with the Rules.
5. Second, as far as the marriage was concerned, it was rejected that the marriage was genuine and subsisting given the manner of the Appellant's entry and the subsequent marriage.

## **The Judge's Findings**

6. The judge, in her "My Findings" section, had a large paragraph 10 in which she expressed concerns about the Sponsor's employment. She stated that,

"I could not ignore the evidence that the Sponsor gave about her employment. From the oral evidence given I doubted that she was a truthful witness and when I looked at the documentary evidence that had been provided I doubted whether they were in fact genuine..." (see paragraph 10(a)).

Later on, the judge observes how the sponsoring wife, Miss Summiyah Kousar, alleged that she worked under the title of "field sales representative", but that "when I asked her what this phrase meant, Mrs Kousar said she had 'had no idea' and in fact laughed when she answered the question ..." (see paragraph 10(a)(ii)). The judge ended up concluding that "Mrs Kousar did not know the most important information about the Appellant which was the basis on which he had come to the UK". The judge also observed that, "her ignorance about her own employment also suggested that this was not a genuine application." Given these findings I could not find that the Appellant or Mrs Kousar to be credible or truthful witnesses..." (see paragraph 10(c)).

7. The judge went on to consider Article 8 and rejected the appeal under this as well.

### **Grounds of Application**

8. The grounds of application state that “the genuineness of the relationship was not an issue raised by the Respondent in her notice of decision” (see paragraph 4). The grounds go on to say that “this is an issue that had been accepted by the Respondent. Therefore ... this was not an issue fairly put to the Appellant to address ...” (paragraph 4).
9. On 22<sup>nd</sup> May 2015, permission to appeal was granted by the Upper Tribunal on the basis that the judge erred in law in not putting her concerns to the parties and adjourning for the Appellant’s representative to take instructions. The grant of permission states that, “I do not seek to limit the challenges in any way”.

### **Hearing**

10. At the hearing before me, the Appellant was represented by Mr Imran Hussain and the Respondent was represented by Mr David Mills. Mr Imran Hussain repeated his carefully constructed grounds of application. He said that the parties had no notice that the genuineness of the marriage was going to be put in issue. He also handed up an extract from the Mental Capacity Act 2005, which he said applied here because if one looks at the supplementary bundle, there is at the end of that bundle a report from the school of the sponsoring wife, when she was aged 13, which confirms that her mental capacity was just 7 years of age. In these circumstances matters needed to be proceeded with some considerable care.
11. For his part, Mr Mills accepted that the failure to put the genuineness of the relationship, which had not been raised as a material issue in the refusal letter, to the parties’ representatives, to enable them to take instructions, and if necessary to apply for an adjournment, was a material error of law. The appropriate course of action now was for this matter to be remitted back to the First-tier Tribunal because the Appellant had been deprived of a fair hearing. He also agreed that the letter from the school at the back of the supplementary bundle did indicate that the sponsoring wife had limited mental capacity. However, he raised a concern that if this was indeed the case, then there may be an issue here about the mental capacity of Miss Summiyah Kousar, the wife, to actually consent to the marriage. Without her proper consent the marriage could not be a valid marriage.
12. Mr Imran Hussain replied to say that the sponsoring wife, Miss Summiyah Kousar, was presently pregnant with the Appellant’s child, and clearly therefore there had been an attempt to make a go of the marriage. He also submitted that upon its remittal back to the First-tier Tribunal the issues should not be restricted simply to the financial considerations

because given that credibility had been put in issue by the judge below, the interpretation and valuation of that credibility in the light of the sponsoring wife's mental capacity, would have an obvious impact upon the way in which the financial and employment details were to be considered. In any event, the Upper Tribunal had not restricted the grant of permission to any particular matter.

### **Error of Law**

13. I am satisfied that the making of the decision by the judge did involve the making of an error on a point of law (see Section 12)(1) of TCEA 2007) such that I should set aside the decision. The judge raised an issue, that had not formed the basis of the refusal in the decision letter, and did not give the parties present an opportunity to deal with the issue in a fair and appropriate manner. On the Practice Statement at 7.2(a) the Appellant has been denied the right to a fair hearing. The appropriate course of action is remitted back to the First-tier Tribunal. This is especially so, given that this does appear to be a sponsoring relative who has a mental disability. The judge's observation of this witness having "in fact laughed when she answered the question", is arguable deserving of sympathy, given that we now know that she is of limited mental capacity, and clearly the evidence will have to be evaluated on this basis by the fact-finding Tribunal below once again.
14. I give directions that this matter is to be listed not earlier than 60 days from the date of this determination, to enable a Social Services report to be compiled and submitted on behalf of the sponsoring wife, Miss Summiyah Kousar. There will have to be four witnesses. The matter is to be listed for two and a half hours. There is to be a provision of an Urdu interpreter. All fresh evidence is to be submitted not later than seven days before the hearing. There are to be witness statements that will stand in as evidence-in-chief, with minimal need for examination-in-chief and cross-examination, especially bearing in mind the vulnerable state of the sponsoring wife, Miss Summiyah Kousar. There is to be a timeous skeleton argument provided by Mr Imran Hussain.

### **Notice of Decision**

15. The decision of the First-tier Tribunal involved the making of an error on a point of law such that it stands to be set aside. I satisfy the decision of the original judge. I remake the decision as follows. This appeal is remitted back to the First-tier Tribunal at Sheldon Court in Birmingham under Practice Statement 7.2(a) to be heard by a judge other than Judge Asjad not before 60 days from the date of this determination.
16. No anonymity order is made.

Signed

Date

Deputy Upper Tribunal Judge Juss

2<sup>nd</sup> November 2015