



**Upper Tribunal
(Immigration and Asylum Chamber)
IA/29566/2015**

Appeal Number:

THE IMMIGRATION ACTS

**Heard at Field House
On 30 August 2017**

**Decision & Reasons
Promulgated
On 11 September 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE MONSON

Between

**AMJID MAHMOOD
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr W Rees, Counsel instructed by Farani Javid Taylor
Solicitors

For the Respondent: Mr E Tufan, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant appeals to the Upper Tribunal from the decision of the First-tier Tribunal (Judge NMK Lawrence sitting at Hatton Cross on 18 November 2016) dismissing his appeal against the decision of the Secretary of State to refuse to grant him indefinite leave to remain as the spouse of a person present and settled here. The ground of refusal, which was upheld by the Judge on appeal, was that the appellant's marriage to his UK sponsor was not genuine and subsisting.

The Reasons for the Grant of Permission to Appeal to the Upper Tribunal

2. In his decision, the Judge said at paragraph [17]:

Insofar as Appendix FM and the relevant Rules are concerned, the first issue is whether the couple are in a genuine and subsisting relationship. If this key (sic) is not available, the other parts of Appendix FM and the Rules (relating to spousal relationship) are not engaged. On the evidence before me I do not think that they are. It is a marriage of convenience entered into to facilitate the appellant's status in the UK. Accordingly, I find that there is "family life" within the terms of Article 8 of the Human Rights Convention.

3. The grounds of appeal were settled by the legal representatives who had appeared for the appellant at the hearing before Judge Lawrence. As the Judge had found that there was "family life" at paragraph [17] of his decision, "*therefore it is submitted that his removal would put the United Kingdom in breach of its duties under Article 8 of ECHR.*" As he had made a family life finding in favour of the appellant, the Judge had erred in law in not asking himself whether the impact of his removal was sufficiently serious as to engage Article 8; and, if so, whether the decision was proportionate.
4. On 6 July 2017 Designated First-Tribunal Judge McCarthy granted the appellant permission to appeal. He said that it might be obvious that the Judge had omitted some key words in paragraph [17]. However, he could not make corrections because it was arguable that the omissions were more than typographical errors.
5. Firstly, the Judge made no assessment as to whether the appellant had any sort of relationship with the sponsor's step-children. It was possible, therefore, that the Judge had reason to find that Article 8 was engaged in terms of family life, despite the clear finding that the marital relationship was not genuine and subsisting.
6. Secondly, the Judge used the term "*marriage of convenience*", which led to some confusion as to what he was considering, since that term is not used in the Immigration Rules, being limited in use to EEA cases.
7. It was not permissible for him to resolve these issues. They could materially affect the outcome because the findings of the Judge were unclear. It followed that permission must be granted. He continued: "*I mention, however, that the very strong findings that the relationship between the appellant and his wife is neither genuine nor subsisting may lead to the same outcome because those findings are not challenged.*"

The Hearing in the Upper Tribunal

8. At the hearing before me to determine whether an error of law was made out, it became clear at the outset that there was no possibility of the decision being remade at the same hearing, in the event that an error of law was made out. This was because the appellant's wife was in Pakistan, from where she and the appellant originate. Mr Rees informed me that she had been due to fly back for the hearing, but had been declared unfit to travel. He showed me her travel plan, and a doctor's note issued by a doctor in Pakistan on 7 August 2017. The doctor said in the note that the sponsor was not fit to travel for a period of one week.

9. Mr Rees submitted that an error of law was made out for the reasons given by Judge McCarthy, and also because the Judge had wrongly failed to conduct a proportionality assessment in accordance with the five-point **Razgar** test.
10. On behalf of the Secretary of State, Mr Tufan adhered to the Rule 24 response settled by a colleague. The adverse credibility findings made by the Judge had not been challenged in the grounds of appeal. It was clear that there were typographical errors in paragraph [17] of the decision. The Judge had intended to say the opposite of what he had actually said. His actual finding was that there was no family life.

Discussion

11. Rule 31 of the Tribunal Procedure Rules 2014 provides that the Tribunal may at any time correct any clerical mistake or any accidental slip or omission in a decision, direction or any document produced by it, by – (a) providing notification of the alleged decision or direction, or a copy of the amended document to all parties; and (b) making any necessary amendment to any information published in relation to the decision, direction or document.
12. Paragraph [17] is not the only paragraph in the decision where words appear to be missing. The Judge rendered himself vulnerable to an error of law challenge by not proof-reading his decision. I am satisfied, to a very high degree of probability, that if the apparent anomalies in paragraph [17] had been drawn to his attention, he would have amended paragraph [17] so as to insert the word “*issue*” after the word “*key*” in the second line; and the word “*find*” after the word “*not*” in the fourth line; and the word “*no*” in the penultimate line so that the final sentence would have read that he found that there was no family life within the terms of Article 8 of the Human Rights Convention, rather than him ostensibly making a positive finding of family life for the purposes of this Article.
13. I reach this firm conclusion for three reasons. Firstly, as acknowledged by Designated Judge McCarthy when granting permission, the Judge makes very strong findings that the parties to the marriage are not in a genuine and subsisting marital relationship. Accordingly, it would be wholly illogical for the Judge nonetheless to find that they enjoyed family life for the purposes of Article 8. Given the choice between a reading of the decision which imports perversity to the Judge, and a reading which accords with common sense, the reviewing court should adopt the reading which is in accordance with common sense, unless it is clear that the alternative and perverse reading is the right one.
14. Secondly, Judge McCarthy postulated the possibility that the Judge was satisfied that the appellant enjoyed family life with the UK sponsor’s step-children, despite not having a genuine and subsisting marital relationship with her. Having reviewed the witness statements that were relied upon before the First-tier Tribunal, I am fully satisfied that this is not the case. Both the sponsor’s children were over the age of 18 at the date of the

refusal decision appealed against. The sponsor's daughter was at all material times living in Pakistan. The evidence of the appellant and the sponsor was that the appellant had met the sponsor at the daughter's marriage in Pakistan. Although the sponsor's son continued to live in the UK, it was not suggested in the evidence before the First-tier Tribunal that the appellant had a parental relationship with him. Since the Judge was not invited to find that the appellant enjoyed family life with the sponsor's step-children, it cannot reasonably be inferred that he intended to make such a finding in paragraph [17] of his decision.

15. Thirdly, the Judge's finding that the marriage between the appellant and the sponsor was one of convenience was a finding which reinforces, rather than detracts from, the finding that the marital relationship is not genuine and subsisting; and it reinforces, rather than detracts from, the finding that there is *inter alia* a typographical error in the penultimate line of paragraph [17], and that what the Judge intended to say was that there was no family life within the terms of Article 8 of the ECHR.
16. An essential function of a judicial decision is to inform the losing party why he or she has lost. Despite the regrettable typographical errors in paragraph [17] of the decision, it is clear from the decision as a whole why the appellant has lost his appeal.
17. The appellant entered the United Kingdom for the first time on 19 March 2011. The Judge found that there were not very significant obstacles to the appellant returning to Pakistan for the reasons which he gave in paragraphs [19]-[21] of his decision. In the light of the Judge's sustainable findings that the appellant did not qualify for further leave to remain either under Appendix FM or under Rule 276ADE, there was no realistic prospect of the appellant succeeding in the alternative in an Article 8 claim outside the Rules. Moreover, it is not clearly shown that the appellant's legal representatives put forward such a case. It appears that the only reason for complaining in the grounds of appeal to the Upper Tribunal that the Judge had not applied the five-point **Razgar** test was because he had made a positive finding of family life in the penultimate line of paragraph [17].
18. Accordingly, as I have found that this positive finding was the product of a typographical error, it follows that the Judge's failure to conduct an Article 8 proportionality assessment outside the Rules is not material.

Notice of Decision

The decision of the First-tier Tribunal is not vitiated by a material error of law, and accordingly the decision stands. This appeal to the Upper Tribunal is dismissed.

I make no anonymity direction.

Signed

Date 5 September 2017

Judge Monson

Deputy Upper Tribunal Judge