



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/02808/2016

THE IMMIGRATION ACTS

Heard at Field House
On 17 May 2018

Decision & Reasons Promulgated
On 22 May 2018

Before

UPPER TRIBUNAL JUDGE KEKIĆ

Between

WAJID MUHAMMAD KHAN
(ANONYMITY ORDER NOT MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr L Lourdes of Counsel

For the Respondent: Mr T Wilding, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant is a Pakistani national born on 27 July 1979. He appeals on human rights grounds against the refusal of the respondent on 20 January 2016 to grant him leave to remain as the spouse of a British national (previously a Nepalese citizen with refugee status). The appellant entered the UK in April 2007 as a Tier 4 migrant. He subsequently married and obtained leave as a spouse in 2012 but his leave was curtailed in February 2013 to expire on 29 August 2013 when his marriage ended. In November 2015 he sought leave to remain on the basis of a second marriage. The respondent accepted that there was a genuine and subsisting relationship but did not accept that there would be insurmountable obstacles to the enjoyment of family life in Pakistan.

2. The appeal was heard by First-tier Tribunal Judge Beg at Taylor House on 16 January 2018 after several adjournments. It was conceded by the appellant that the requirements of the rules could not be met and the matter was pursued only on article 8 grounds outside the rules. The judge heard oral evidence from the appellant and his wife and dismissed the appeal by way of a determination promulgated on 6 February 2018. She was not satisfied that the marriage was genuine or that family life could not be enjoyed in Pakistan or that the appellant could not return and seek entry clearance to join his spouse.
3. The appellant takes issue with the findings of the judge on the genuineness of the marriage. It is argued that this was not an issue raised by the respondent in the decision letter. It is also argued that the judge showed bias by her remarks on possible conversion by the appellant's wife and that she failed to take account of the objective evidence which showed that marriages between Muslims and Hindus were not recognized in Pakistan.
4. Permission was granted by Designated Judge Murray on 6 March 2018. The matter then came before me on 17 May 2018. The appellant and his wife were present although an application had been made for an adjournment on the basis that the appellant had a bad back. That application was refused due to a lack of medical evidence on 14 May 2018.

Submissions

5. Mr Lourdes relied on the grounds for permission. He submitted that the only issue before the judge had been that of insurmountable obstacles and she had erred in going beyond that. She should only have focused on the respondent's case. The judge raised the issue of conversion at paragraph 28. That was also wrong. Pakistan did not recognise marriages between Muslims and Hindus so the appellant could not take his wife back to Pakistan. Nor could they go to Nepal as the sponsor was now a British national and Nepal did not allow dual nationality. The judge was not entitled to reach a decision on the basis of discrepancies. The appellant could not go to Pakistan because of the threats made by his family.
6. Mr Wilding responded. He submitted that the judge should have put her concerns over the marriage to the appellant at the hearing but this error was not material because she found that there were no insurmountable obstacles to the continuation of family life in Pakistan. The judge considered the oral evidence and accepted parts of it and rejected others. She did not accept that she had been told the truth about the appellant's family. She also noted that the appellant's brother had attended the wedding which undermined the claim of family disapproval. The judge considered the material on inter faith marriages but these reports did not address the situation for love marriages particularly in

urban areas. There was no evidence to show that the state interfered in such cases. As no insurmountable obstacle to return had been shown, the judge's error was not material. There was also no reason offered for why the appellant could not live away from his family and/or why he could not make an application for entry clearance.

7. Mr Lourdes replied. He submitted that as a Hindu/Muslim marriage was not recognized in Pakistan, the appellant could not enjoy family life with the sponsor in Pakistan. She did not wish to convert to Islam. There were, therefore, hindrances to the continuation of family life. The appellant had been open about his brother attending the marriage. He had not sought to hide that fact.
8. That completed submissions. At the conclusion of the hearing I reserved my decision which I now give.

Discussion and Conclusions

9. I have considered the submissions and determination of the First-tier Tribunal Judge with care.
10. Whilst it is indeed correct that the respondent did not raise the issue of the genuineness of the marriage in the refusal letter, the oral evidence given by the appellant and his wife at the hearing raised a number of difficulties and it was as a result of these that the judge concluded that the marriage was not genuine (see paragraph 28). The problems are summarized by the judge (at 33). The appellant and sponsor were ignorant over basic information about each other and their respective families. The appellant maintained that his wife was an only child whereas she said she had a sister. She said that her father was dead but he said that her parents were alive. He said he had a brother and a sister whereas his wife said he had just one brother. She did not know his mother's name. She said the appellant had never worked in Pakistan; he gave evidence that he had. She did not know the area he came from. The judge also noted that despite claiming asylum and obtaining refugee status, the appellant's wife had regularly returned to Nepal, plainly showing she had no fear of return and undermining the credibility of her claim. She was also able to continue to visit her family despite her claim that they also disapproved of the marriage.
11. The judge also noted that the relationship allegedly commenced in 2010 whilst the appellant was still married to his first wife (and some three years before his divorce) and had failed to notify the respondent about his change of circumstances. She also noted that whilst the appellant claimed to have been forced into his first marriage, he then refused to give his first wife a divorce and he had been contradictory over whether she was a relative or friend of the family. She did not accept that the appellant's employer and his wife (who was

the sister of the appellant's first wife) would have accepted the new relationship at a time when the appellant was still married or that they would attend his second wedding when he had been involved in an acrimonious divorce. She placed little weight on their statements which she noted were prepared in similar terms and noted they had not attended the hearing and allowed themselves to be cross examined. She rejected the appellant's explanation that he had not thought their evidence was required because he had obtained their statements in support of his appeal and therefore plainly had given thought to their evidence. She noted the absence of independent evidence of the claimed relationship. She noted that the landlord on the appellant's earlier tenancy agreements was the same employer and the brother in law of his first wife and that there was no tenancy agreement in respect of his current accommodation. On the basis of all these reasons she found that the marriage was not genuine.

12. It is plainly not the case that a judge can never depart from the position taken by the respondent in a decision letter. Oral and other documentary evidence can at times give rise to new concerns that did not exist previously and it is not right that a judge has no authority to consider matters arising from evidence before him/her. I do accept, however, that if a new matter arises this should be put to the parties at the hearing so that they have a chance to respond. That did not happen in this case and the judge was wrong, in my view, to reach a finding without alerting the parties to the different stance she intended to take and/or to the concerns she had.
13. That is, of course, not the end of the matter as I must also consider whether the judge's error was material.
14. As Mr Lourdes submitted, the issue for the judge was whether there would be insurmountable obstacles to the enjoyment of family life in Pakistan. The appellant gave two reasons as to why this would not be possible: the threats made against him by his family who would track him down on return and the fact that marriages between Muslims and Hindus are not recognised. The judge made findings which went to this issue.
15. The judge comprehensively rejected the claims of the appellant that he had been threatened by his family over the marriage and that they would prevent his return to Pakistan and/or would trace him wherever he went. She noted that there was no evidence as to how they would be able to prevent his return and no evidence to show they had the influence, or resources to track him down. She noted that the appellant's brother had attended the wedding which further undermined the claim that his family were against his second marriage. She considered that he would be able to live away from his family in any event. Those are findings that are properly made and are sustainable. It was open to the judge to find that the appellant could be expected to return at the very least to make an entry clearance application and that no good reason had been given

for why he could not do so. Indeed, even at the hearing before this Tribunal, when invited to provide a reason, Counsel could add nothing more to the claim of the appellant that his family would hunt him down.

16. The judge was also criticized for not considering the country information on interfaith marriages placed before her. In fact, the judge did consider this evidence as is clear from paragraphs 36 and 37 of her determination. Mr Lourdes relied heavily on two reports: a report from 2014 by The Nation and the respondent's Country Information and Guidance on interfaith marriage in Pakistan dated January 2016. The evidence does not, however, support his submissions. The report by the Nation addresses the position for Muslim women who marry or seek to marry non-Muslim men. That scenario does not apply in this case. The Home Office report confirms that Muslim women cannot marry non-Muslim men and that such marriages are considered illegal (5.1.1). Again, this situation does not apply to this case. The report notes that interfaith marriages are common (5.1.2) but the focus appears to be on women marrying outside Islam, the fear presumably being that the woman will leave Islam and convert to her husband's faith. The report confirms that Muslim marriages to Hindus or Sikhs are not recognized under Islamic law although there were cases of such marriages occurring (at 7.1.1) and an example of a high-profile case of the Muslim daughter of the Pakistani Prime Minister's niece to a Hindu man is cited at 7.2.5. It is not specified whether the marriages referred to at 7.1.1 are between Muslim women and Hindu/Sikh men or whether they include Muslim men. Certainly, the emphasis of both reports is on the attitudes towards interfaith marriages undertaken by Muslim women. The reference to Hindu women being forced to convert to Islam (7.1.1) refers to unmarried women who are subsequently married off. There is no evidence at all on the situation for a Muslim man marrying a Hindu woman.
17. For these reasons, the judge's findings adequately resolved the matter of insurmountable obstacles and the return of the appellant either with his wife or without her (in order to seek entry clearance). The appellant has only even had limited leave in the UK. He was less than straightforward about his circumstances with respect to the breakdown of his first marriage and that must impinge on his general integrity and credibility. Little weight can be attached to a private/family life established during a precarious stay. The judge's findings and conclusions were sustainable on this issue and that means that her error with respect to the issue of not putting the parties on notice as to the concerns over the genuineness of the marriage is not a material one.
18. Mr Lourdes also complained that the judge was biased over her findings on conversion at paragraph 28. All the judge was saying in that paragraph was that there was no evidence over whether the appellant had asked his wife to convert to Islam so that they could have an Islamic marriage. That is a factual assessment of the evidence before her. I do not read that as the judge saying that the appellant's wife should convert. In any event, that remark plays no part in the outcome of the appeal.

Decision

19. The First-tier Tribunal did not make any material error of law which necessitates the setting aside of the decision. The decision to dismiss the appeal stands.

Anonymity

20. I was not asked to make an anonymity order and, in any event, see no reason to do so.

Signed

A handwritten signature in black ink, appearing to read "R. Keefe". The signature is written in a cursive style with a period at the end.

Upper Tribunal Judge

Date: 17 May 2018