



**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/04973/2018**

THE IMMIGRATION ACTS

**Heard at Field House
On 18th January 2019**

**Decision & Reasons Promulgated
On 15th February 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE D N HARRIS

Between

**MR TARANJIT SINGH TOOR
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms L Turnbull, Counsel instructed by M & N Solicitors Limited

For the Respondent: Mr N Bramble, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a citizen of India born on 13th March 1977. The Appellant claims to have entered the UK on 5th September 2007 with entry clearance as a visitor for the period from 28th April 2008 until 28th October 2008. The Appellant overstayed that visa. On 15th April 2014 he applied for an EEA residence card as a non-EEA national spouse/civil partner with his Sponsor, [BD]. This application was refused on 28th April 2014. A further application was made refusing a similar visa on 25th November 2014.
2. On 1st November 2016 the Appellant made a human rights claim in an application for leave to remain in the UK under Appendix FM on the basis

of his family life with his partner [PC]. That application was refused by Notice of Refusal dated 23rd January 2018.

3. The Appellant appealed and the appeal came before Judge of the First-tier Tribunal Mathews sitting at Newport on 5th September 2018. In a decision and reasons promulgated on 26th September 2018 the Appellant's appeal was dismissed.
4. Grounds of Appeal were lodged to the Upper Tribunal on 8th October 2018. On 6th December 2018 Judge of the First-tier Tribunal Simpson granted permission to appeal. Judge Simpson noted that there were four grounds maintained and granted permission on all grounds. The grant of permission sets out succinctly the basis of the Appellant's application for permission to appeal:
 - (i) It was asserted that when assessing the Appellant's appeal against the Respondent's refusal of his human rights application for leave to remain in the UK on the basis of his family life with his British partner and by date of hearing stating that they were now married, that damaging credibility findings concerning the genuineness of their relationship arising from the Appellant's oral evidence about the timeline of their relationship as set out at paragraphs 15 and 19 to 21 of the determination, including with reference to timeline of his previous marriage and divorce from an EEA national, that with reference to the Record of Proceedings it appeared arguable that those damaging credibility findings were based on a partial account of the Appellant's evidence. Furthermore, it was arguable that absence of a latitude of understanding of witness evidence when coming to the matter of memory and chronology this was likely even more to the fore when under the glare of a court hearing.
 - (ii) Judge Simpson noted that the First-tier Tribunal Judge had observed that there had only been provided a photocopy of the Appellant's certificate of marriage to his current wife at the hearing but did not otherwise state in the decision whether sight of the original certificate had been sought. The judge noted in the grounds there was an assertion that Counsel had handed up to the judge at the hearing the original certificate of which latterly there was no mention in the decision. These were matters that the judge considered of arguable materiality given the judge's findings not only that there had not been shown that the Appellant and [PC] had had a genuine relationship and/or cohabited, but furthermore that it had not been shown that they had married either.
 - (iii) It was arguable that there had not been produced any original documentation by the Appellant at the hearing, with no mention of the concern having been raised and given that such documentation was arguably material in going to the relationship, residence, etc., there appeared as a matter of fairness that these issues required to have been raised directly at the hearing.

(iv) Fourthly, it was raised that the judge had erred when citing the name of a person unknown in the appeal in the concluding part of the decision.

5. On 19th December 2018 the Secretary of State responded to the Grounds of Appeal under Rule 24. It is on that basis that the appeal comes before me to determine whether or not there is a material error of law in the decision of the First-tier Tribunal Judge. The Appellant appears by his instructed Counsel, Ms Turnbull. The Secretary of State appears by his Home Office Presenting Officer, Mr Bramble.

Submissions/Discussion

6. Ms Turnbull points out that there is an error in the date quoted for when the Appellant entered his present relationship and I note that factual amendment. She contends that despite the principles of *Devaseelan* the fact that the Appellant had been found to have entered previously a proxy marriage was not determinative of the current application and that it was appropriate for the judge to have given due consideration to the Appellant's current relationship and also the position so far as it would relate to his current wife and stepdaughter. She further submits that the judge was under a mistaken belief that the appeal was also based on an attempt by the Appellant to clear his name of allegations of his previous sham marriage on the basis that that clearly was not in his case accepted despite the findings of the court. Ms Turnbull submits that the Secretary of State had a duty to provide cogent evidence regarding that and that the Appellant had repeatedly stated that he was "not good with dates" and the fact that he had guessed dates had been held against him. She submits that the evidence of the Appellant and his wife were consistent.

7. Secondly, she turns to the issue relating to the fact there were no original documents provided and submits that this is incorrect, that the original marriage certificate had been given to the judge but then returned to the instructing solicitors, and that the original P60 of the Appellant's spouse had been retained on the court file. So far as other documents were concerned it is Ms Turnbull's submission that the judge had never asked for them but they were available at court.

8. Thirdly, she takes me to paragraph 53 of the decision where there is reference to a Ms Kirkwood. She submits that there is no such person with any involvement in the proceedings.

9. Finally, she submits that the judge gave no reasons why he did not accept the Appellant's explanation that he did not change his address at the bank immediately when he moved because his brother still lived there and he would have been able to receive statements.

10. In response, Mr Bramble takes me as his starting point to the Rule 24 response. Quite often these days Rule 24 responses are not provided but in this one he submits that the relevant paragraphs are of importance. I set them out:

- “3. *The fact that the Appellant claims to be poor with dates does not mean that the First-tier Tribunal Judge is in any way bound by that claim. It is for a judge to decide on the Appellant’s credibility and when there were such glaring inconsistencies in the Appellant’s evidence and that of his ‘wife’, the First-tier Tribunal Judge was entirely entitled to find that the relationship was not genuine.*
4. *In addition the mere fact the Appellant still maintains that his previous EEA application was genuine, when a previous First-tier Tribunal Judge and Upper Tribunal found it was not, does not mean that the First-tier Tribunal Judge is unable to make a negative credibility finding against the Appellant”.*

He submits that Ms Turnbull is attempting to sidestep the important issue with regard to the findings made by the judge and takes me as his starting point to paragraph 19 of the judge’s decision. This is a paragraph where the judge has made findings, he submits, relating to evidence given by the Appellant’s current spouse, and that the judge had been correct thereafter to make findings following *Devaseelan* principles regarding the Appellant’s sham marriage to Ms [D]. He emphasises to me that the reason for refusal was based on suitability under Section S-LTR and that all that is set out therein in the Notice of Refusal remains valid. He submits that the judge has made a clear finding regarding the EEA application and that it is not possible nor has it been shown in any way how the Appellant can get over that decision. In a sense he submits that the appeal should basically stop there on the basis that the Appellant cannot succeed under the Rules.

11. However, he goes on to address the other grounds. He relies strongly on the Rule 24 and takes me firstly to paragraphs 15 and 18, 19 and 20 of the judge’s decision which sets out the evidence that the judge has heard and led to his making findings with regard to the credibility of the Appellant’s testimony.
12. As to the production of an original marriage certificate he is uncertain as to whether this actually assists the Appellant at all and points out that the Home Office minute does not refer to the marriage. He is critical (as am I) of Ms Turnbull for the manner in which she has addressed this. Ms Turnbull has effectively sought to give evidence as to what happened at the previous hearing and it is Mr Bramble’s submission that had she wished to do so, she should have recused herself from the current hearing and given evidence by way of witness statement. Having said that, I am not sure that the evidence she has given adds anything to the issues that are extant before me.
13. Regarding the reference to a Ms Kirkwood, he submits that that is a typographical error and in any event, it does not add anything or detract from the judge’s decision. Fourthly, he submits that the judge has listened to the evidence so far as the position relating to the bank statements are concerned and was entitled to make the findings that he did. He asked

me to find that there is no material error of law in the judge's decision and to dismiss the appeal.

The Law

14. Areas of legislative interpretation, failure to follow binding authority or to distinguish it with adequate reasons, ignoring material considerations by taking into account immaterial considerations, reaching irrational conclusions on fact or evaluation or to give legally inadequate reasons for the decision and procedural unfairness, constitute errors of law.
15. It is not an arguable error of law for an Immigration Judge to give too little weight or too much weight to a factor, unless irrationality is alleged. Nor is it an error of law for an Immigration Judge to fail to deal with every factual issue of argument. Disagreement with an Immigration Judge's factual conclusion, his appraisal of the evidence or assessment of credibility, or his evaluation of risk does not give rise to an error of law. Unless an Immigration Judge's assessment of proportionality is arguable as being completely wrong, there is no error of law, nor is it an error of law for an Immigration Judge not to have regard to evidence of events arising after his decision or for him to have taken no account of evidence which was not before him. Rationality is a very high threshold and a conclusion is not irrational just because some alternative explanation has been rejected or can be said to be possible. Nor is it necessary to consider every possible alternative inference consistent with truthfulness because an Immigration Judge concludes that the story is untrue. If a point of evidence of significance has been ignored or misunderstood, that is a failure to take into account a material consideration.

Findings on Error of Law

16. I start by briefly addressing the issue as to whether or not Ms Turnbull has given evidence. I think it is clear that she has but I would also like to emphasise that all she has effectively done is assist the court and I do not seek to go behind what she has had to say or to consider that that in any way decries from the appeal that is before me or should influence it. What does influence me are the findings made by the First-tier Tribunal Judge. Firstly, the judge has given due consideration to the position regarding the Appellant's purported sham marriage with Ms [D] which is to be found at paragraph 15 of his decision. The judge was perfectly entitled to give due consideration as his starting point to the authority of *Devaseelan [2002] UKIAT 00702*. Further, whilst Ms Turnbull argues that the judge has to look at other matters, in particular the position of Ms [C] and stepdaughter, the judge has addressed these matters. It is clear at paragraph 16 where the judge states:

"I have read the decision of the First-tier Tribunal, Upper Tribunal and Court of Appeal on the issue of this man's marriage to Ms [D]. I do not treat those decisions as definitive upon the issue, but take them as an informed starting point. I note that beyond the Appellant's assertions that it was in fact a genuine relationship, I have no fresh evidence on the point".

17. It is consequently clear that the judge has only treated that evidence in the proper manner in which he should have done and that he has gone on to consider the issue with regard to the current relationship afresh. The judge has dealt with this at paragraphs 18 to 24. The judge has made clear findings regarding that evidence. He has noted the contradictions and the failure of the Appellant to get dates right, in particular the failure of the Appellant to note the exact date of his marriage. The judge has thereafter gone on to make conclusions as to the Appellant's credibility. A proper approach to credibility would require an assessment of the evidence and of the general claim. Such factors could consist of the internal consistency of the claim, the inherent implausibility of it, and external factors. I acknowledge that theoretically a claimant need do no more than state his claim but that claim still needs to be examined for consistency and inherent implausibility. It seems to me that that process is exactly what has been undertaken in this matter by the First-tier Tribunal Judge. So far as the issues of consideration of documents are concerned I am satisfied that the judge has looked at the documents that were made available. Regarding the reference at paragraph 33 to a Ms Kirkwood, it is accepted this is an error but I do not consider it to be material. It adds nothing to the appeal one way or the other, and finally, I endorse the approach adopted by the judge with regard to the bank statements in that namely the judge has listened to the evidence and was entitled to make the findings that he did.
18. What the judge has done here is to consider, as Mr Bramble put it to me, some building blocks. The starting block was the finding of an original sham marriage. Thereafter, the judge has considered the inconsistencies in the current testimony that was before him, and thirdly has noted that the further evidence failed to assist the Appellant in the submissions that were made.
19. In all the circumstances I find that this is a judge who has gone and given full and due consideration to the facts and set out very thoroughly his findings and assessment of the Appellant's claim based on human rights grounds. The decision discloses no material error of law and for all the above reasons, the Appellant's appeal is dismissed and the decision of the First-tier Tribunal Judge is maintained.
20. No anonymity direction is made.

Signed

Date

Deputy Upper Tribunal Judge D N Harris

TO THE RESPONDENT

FEE AWARD

No application is made for a fee award and none is made.

Signed

Date

Deputy Upper Tribunal Judge D N Harris