



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

Appeal Number: HU/07414/2018

**THE IMMIGRATION ACTS**

**Heard at North Shields  
On 7 June 2019**

**Decision & Reasons Promulgated  
On 19<sup>th</sup> June 2019**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE J M HOLMES**

**Between**

**A. B.  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellants: Ms Cleghorn, Counsel instructed by Alex Bell Immigration Law

For the Respondent: Mr Stainthorpe, Home Office Presenting Officer

**DECISION AND REASONS**

The Appellant, a citizen of Pakistan, entered the UK legally but became an overstayer on 7 June 2006. He sought to regularise his status with an application for leave to remain on human rights grounds outside the Immigration Rules, relying upon his marriage to Ms A. That application was refused on 13 March 2018. The Appellant's appeal against that decision was heard, and dismissed, by First-tier Tribunal Judge Cope, in a decision promulgated on 22 October 2018, following a hearing on 10 September 2018.

The Appellant's application for permission to appeal was granted by First-tier Tribunal Judge Simpson on 19 November 2018 on all the grounds advanced. There were four (wrongly numbered as five). The Respondent did not reply to that grant with a Rule 24 response. Neither party applied pursuant to Rule 15(2A) for permission to introduce further evidence. Thus the matter came before me.

### The challenges in the grounds

It is conceded before me that there is no merit in the first ground.

The focus of the hearing was upon Ground 2 and 3. The latter, which is made out, is a complaint that the Judge failed to make any reference in his decision to the authorities of Tikka [2018] EWCA Civ 642 or Chikwamba [2008] UKHL 40, which were relied upon in the course of the hearing before him. There were also the more recent authorities on the Chikwamba principle to consider; Kaur [2018] EWCA Civ 1423, and TZ [2018] EWCA Civ 1109. Nor am I satisfied that his decision can be read as demonstrating that he had the relevant principles set out in those decisions in mind when reaching his own decision. On his own findings this was an interfaith marriage, and this should have led him to consider whether it was reasonable to expect Ms A to travel to Pakistan and to live with the Appellant in Pakistan for any period of time. Nor is there any consideration by the Judge of whether the Appellant had demonstrated with the evidence supplied in support of his appeal, that if an entry clearance application were made at the date of the hearing from Pakistan it would meet the requirements of the Immigration Rules.

Ground 2 is a complaint about procedural unfairness on the part of the Judge. Ms A had produced in evidence a divorce certificate to show that her first marriage had been dissolved, and that she was free to marry the Appellant. It is common ground before me that she was not questioned about the content of that document during the hearing, and that the Respondent did not suggest that this document was a forgery, or that it was indicative of any unreliability in the evidence of either the Appellant or Ms A. It would appear that during the course of writing his decision the Judge concluded in the light of the content of the certificate that Ms A's evidence was unreliable, which then formed the basis for a chain of reasoning about the credibility of the Appellant and Ms A. It is common ground that this was a credibility point first taken by the Judge in the course of writing his decision. There was no attempt to relist the appeal for further evidence on the point; if there had been the Appellant would have been able to direct the Judge to the content of a 2010 report from the Refugee Board of Canada which he might then have accepted dealt with the points he had identified.

In the circumstances I am satisfied that the approach taken to the appeal was procedurally unfair. It was common ground that if that was my conclusion the proper outcome would be for remittal of the appeal to the First-tier Tribunal for rehearing. In circumstances such as this, when it would appear that the relevant evidence has not properly been considered by the First Tier Tribunal, the effect of that error of law has been to deprive the parties of the opportunity

for their case to be properly considered by the First Tier Tribunal; paragraph 7.2(a) of the Practice Statement of 13 November 2014. Moreover the extent of the judicial fact finding exercise required is such that having regard to the over-riding objective, it is appropriate that the appeal should be remitted to the First Tier Tribunal; paragraph 7.2(b) of the Practice Statement of 13 November 2014.

To that end I remit the appeal for a fresh hearing by a judge other than First-tier Tribunal Judge Cope, at the North Shields Hearing Centre. The following directions were given at the hearing.

No interpreter is required.

The Appellant must file and serve any further evidence upon which he intends to rely in support of his appeal by 5pm 28 June 2019. If the Appellant is unable to meet this timetable he must inform the Tribunal, explaining the circumstances, and offering a new timetable that he is able to meet.

The remitted appeal is suitable for the short warned list. Absent any well founded objection the Tribunal is likely to call the appeal on for hearing at short notice after 1 July 2019.

#### Notice of decision

1. The decision did involve the making of an error of law sufficient to require the decision to be set aside on all grounds, and reheard. Accordingly the appeal is remitted to the First Tier Tribunal for rehearing, with the directions set out above.

#### Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed  
Deputy Upper Tribunal Judge J M Holmes

Date 14 June 2019

