



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/13121/2018

THE IMMIGRATION ACTS

Heard at Field House
On 18 October 2019

Decision & Reasons Promulgated
On 28 November 2019

Before

UPPER TRIBUNAL JUDGE PERKINS

Between

SABIHA ALI

(anonymity direction not made)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr S Ballace, Counsel instructed by DS Solicitors

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

DECISION AND REASONS

1. This is an appeal against the decision of the First-tier Tribunal to dismiss the appeal of the appellant against the decision of the Secretary of State refusing him entry clearance as the wife of a British citizen. The appeal was, appropriately, brought on human rights grounds. In outline it is the appellant's case that refusing her entry clearance is a disproportionate interference with her private and family life and the private and family life of her husband because she does in fact satisfy the requirements of the Immigration Rules.
2. The First-tier Tribunal disagreed and permission to appeal was given because the grounds made out an arguable case that the First-tier Tribunal Judge had misunderstood some of the evidence and had consequentially underestimated the strengths of the appellant's case.

3. The appellant asked for a review of the decision by the Entry Clearance Manager and the Entry Clearance Manager's reasons for upholding the decision are set out below:
4. "The appellant was refused as the Entry Clearance Officer was not satisfied that the appellant met the Relationship Requirement. The appellant and sponsor have not demonstrated that she and the sponsor are in a genuine and subsisting relationship. The appellant has submitted only her wedding photographs and these in isolation do not confirm their relationship is subsisting. The appellant and sponsor state that they first met in 2009 and were married in 2015. As evidence of the relationship the only supporting documents submitted with the Grounds of Appeal are some wedding photos, two greeting cards and a phone record. The cards do not prove they were sent from the sponsor to the appellant and the phone records in isolation do not satisfy me that the communication took place between the appellant and sponsor. The appellant has not provided evidence to show an affectionate and supportive relationship exists. The grounds for appeal are silent as to why the sponsor has not visited the appellant since their marriage."
5. For the avoidance of doubt it was confirmed that the appellant met the financial and English language eligibility requirements and was not "unsuitable".
6. It was also accepted that a valid marriage was contracted on 19 August 2015.
7. The appellant's husband, described as her "sponsor", attended and gave evidence. He confirmed that theirs was an arranged marriage between cousins and the marriage was celebrated at a village in Pakistan. Thirty members of his family went from the United Kingdom to the wedding. It was the sponsor's evidence that he kept in contact with the appellant by way of telephone calls, "WhatsApp" and greeting cards. He said they spoke every day, or every other day, and since the marriage he has sent money abroad every month, or every other month.
8. In support of his evidence he showed a photograph on his mobile phone of a money transfer receipt dated January 2019 which was similar to documentary evidence produced in the form of five receipts between 28 September 2016 and 4 September 2017 showing payments in total of £1,000.
9. The sponsor confirmed that he had only seen the appellant on one occasion over the three and half years since their wedding. He said he did not like the weather or the food in Pakistan. The appellant had taken time to pass her English language test and did not do that until 2018. He was collecting documents to support her application but was busy at work.
10. There were records said to show telephone contact between the sponsor and the appellant in the bundle from December 2015 to March 2016 and then from August 2017 to December 2017 but nothing more recent. The First-tier Tribunal Judge found the sponsor to be an unsatisfactory witness and said at paragraph 17 that he found him:

"to be a hesitant witness who at times appeared unsure of his evidence - for instance whether he spoke to the appellant daily, or every second day, or whether he sent money monthly, or every second month."

11. He then went on to say that for that reason and for other reasons identified below he was not satisfied that the sponsor was a truthful witness and the case was not made out.
12. The judge had difficulties with the evidence about telephone calls. It was the appellant's case, submitted by his legal representative, that the critical phone number ended with the numbers "579". That was said to be the appellant's telephone number. There were itemised calls to that number but the judge found no evidence at all that it was in fact the appellant's telephone and the judge noted it was not the contact number provided by the appellant in her application for United Kingdom entry clearance.
13. The judge noted that between August and December 2017 the sponsor's telephone call history recorded calls to a number of Pakistan telephone numbers including the primary contact number for the appellant in her application. The judge regarded this as evidence of telephone contact between the sponsor and the appellant but it was limited. The judge rejected the explanation that it was a result of using phone cards that there was no further evidence available. It had been his evidence that he was collecting evidence of the extensive phone calls and the judge did not believe that he would have failed to obtain better evidence of telephone calls, if they in fact took place.
14. The appellant or sponsor did not produce screenshots to confirm that there was regular contact by WhatsApp.
15. The judge was:
"similarly unimpressed by the single card produced to the respondent which purports to be from the sponsor to the appellant two years after a significant event which I take to be their wedding."
16. The judge noted that he was given no evidence that a card had actually been sent or how a card purportedly sent to Pakistan in June 2018 was in the possession of United Kingdom solicitors. The judge found there was no evidence of correspondence between the appellant and the sponsor which he would have expected if there was indeed a genuine and subsisting relationship.
17. The judge did not accept as credible the explanation for not travelling to Pakistan between August 2015 and October 2018. The judge noted from the stamps in the passport that the sponsor left Pakistan a week after his wedding to the appellant in August 2015 and did not return until October 2018 some five months after the refusal decision. The judge did not find his explanation, namely that he was busy at work, satisfactory. He was earning good money and could have travelled to Pakistan with ease and regularly if that is what he had wanted to do.
18. The judge was also critical of the limited evidence of financial transfers given that the sponsor was irregular work in what the judge described as a "buoyant financial position".
19. The judge found that he been given only five photographs and they were wedding photographs. There were no photographs from their visit in October 2018. Again,

the judge found this to be inconsistent with a genuine and subsisting relationship between the appellant and sponsor.

20. The appellant had not produced a statement at all.
21. Putting all these things together the judge was not satisfied there was a genuine subsisting relationship as required by the Rules and found nothing of an exceptional nature that would justify a decision.
22. The grounds of appeal are extensive. Although the grounds try conspicuously to identify errors of law I do not find the cases relied on in the grounds to be of much assistance to me or the appellant. Issues of this kind can only be determined properly by a fair evaluation of the evidence as a whole and examples of decisions that have been unsatisfactory because they did not amount to a fair analysis of the evidence as a whole are no more than illustrative of how things went wrong in another case.
23. Point 8 needs specific consideration and was the main reason for permission being granted. There the judge said:

“There is further criticism of the lack of documentary evidence between the parties such as correspondence and greeting cards. Again, it is respectfully submitted that this is a material error of law. The judge clearly failed to properly look through the respondent’s bundle which contains not only a number of photographs but crucially at pages 47 onwards, a number of anniversary greeting cards. The judge refers to just ‘one single card’ at paragraph 21 of the determination. This is clearly incorrect and is a material error.”
24. I can make no sense of that ground. At page 47 of the bundle is the financial transfer document. There are two cards in the bundle which is consistent with the description of “a number of anniversary and greeting cards” but hardly a wholesale shift in the nature of the evidence. The only photographs that I can see appear to be wedding photographs.
25. Ground 9 complains that if the judge was concerned about the evidence of telephone calls and greeting cards he should have put the point to the sponsor. There is merit in that point. It is always desirable to put something to witness to hear the answer. However, it is for the appellant to prove the case and for the appellant therefore to present the evidence about contact in an accessible and digestible way. If, for example, a telephone number has been changed it is not difficult to say so and give an explanation and the date when that happened. Whilst this is true when the application is made it is even more the case when an appeal is presented. The appellant knew what had gone wrong with the decision and it was her business, through her legal representatives, to put it right. If, as sometimes happens, the grounds were able to follow through the point and explain what would have happened if the matter had been put it may have been possible to make a material error of law from this possible mistake but that is not what has happened here.
26. I do not agree that the judge erred in his consideration of the financial evidence. The appellant’s case is that her husband was in regular work, I think as a pharmacy technician, earning something in the order of £30,000 a year. However, the evidence of financial transfers was limited to a total sum of £1,000 over a short period in their

relationship. If the relationship is genuine and subsisting and the sponsor was in a position to pay more and regularly the gap is obvious and should have been addressed.

27. The grounds also criticise the judge for adverse findings about the degree of contact after the wedding. There is no error of law there. It is a matter for the judge.
28. Finally, the grounds complain that no reasons are given or inadequate reasons are given. I do not agree. The fact is the parties to the marriage have had little direct contact since the wedding and no better explanation offered than the husband's dislike of living in Pakistan. There is evidence of only occasional modest financial support and no clear evidence of telephone contact except the testimony of the sponsor. The sponsor was not a good witness. If a person is in regular and frequent contact with a partner overseas it is unremarkable that they cannot give immediately clear answers about *exactly* when they contact each other. However, the problem with the sponsor's evidence is that he did not seem to know if he contacted his wife every day or every other day and that is a very different proposition. Neither answer is determinative of the appeal but the Judge was entitled to draw adverse inferences from the inconsistency.
29. Mr Ballace was as helpful as could be expected. He pointed out that in the witness statement the sponsor said the telephone number had changed and that explanation did not feature in the Decision and Reasons. The difficulty with this submission is the skimpy evidence provided by the sponsor concerning the change. The sponsor said at paragraph 6 of his witness statement that the appellant "had changed her mobile number and therefore the number I called changed." The relevant numbers were not identified and there was no attempt to indicate the date of change or the evidence that supported the claimed telephone conversations before and after the number had changed.
30. The witness statement went on "There is no disputing that I called her even six to ten times a day sometimes" but this contrasts with the oral evidence that he was uncertain about whether he phoned every day or every other day.
31. I have considered the submissions and the Rule 24 response prepared by Mr Melvin.
32. I am wholly unpersuaded that any material error of law has been made out. At most there was a mistake about the number of cards received. That should not have happened and did not enhance the Decision but the difference is not between one card and a pile of cards but between one card and two cards and that is not material. Neither is it safe to move from there to say that the judge's overall consideration was careless or inadequate. The inadequacies here are in the details of the case not in the broad evaluation of the evidence.
33. Judges are not blessed with second sight. The First-tier Tribunal Judge does not know and I do not know whether this is a genuine marriage. What is quite clear is the First-tier Tribunal has given lawful reasons for finding it not proved that the marriage is subsisting. The appellant and sponsor know the truth probably better than anyone else. If in fact theirs is a subsisting marriage it may be that a properly

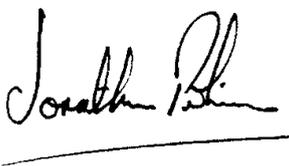
presented application with more care to the details of contact and more information about financial transfers and telephone numbers could support a different decision.

34. Be that as it may, I am wholly unpersuaded there is any error of law in the decision complained of and I dismiss the appellant's appeal.

Notice of Decision

35. This appeal is dismissed.

Signed
Jonathan Perkins
Judge of the Upper Tribunal

A handwritten signature in black ink, appearing to read 'Jonathan Perkins', is written over a horizontal line.

Dated 25 November 2019