



(IMMIGRATION AND ASYLUM CHAMBER)

UPPER TRIBUNAL

APPEAL NUMBER: HU/23584/2016

THE IMMIGRATION ACTS

Heard at: Field House

Decision and Reasons Promulgated

On: 4 January 2019

On: 25 January 2019

Before
Deputy Upper Tribunal Judge Mailer

Between
MR MUHAMMAD BILAL
ANONYMITY DIRECTION NOT MADE

Appellant
and
SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation

For the Appellant: Ms K Reid, counsel, instructed by Sky Solicitors Ltd

For the Respondent: Ms J Isherwood, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a national of Pakistan, born on 24 May 1987. He appeals with permission against the decision of First-tier Tribunal Judge Shergill, who in a determination promulgated on 12 September 2018, dismissed his appeal against the respondent's decision dated 30 September 2016 to refuse his human rights application for leave to remain in the UK on the basis of family life with his partner and her daughter.
2. The appellant came to the UK on 14 December 2011 as a student. He renewed his leave in 2013 until 6 November 2015. It was curtailed on 31 March 2015. Leave expired on 30 May 2015. There was no right of appeal. He was encountered working on 9 July 2016. He has had no lawful leave since and made his unsuccessful application on 26 July 2016 based on a relationship with Ms Rooma

Khalid, referred to by the Judge as P. He claimed to have lived with her since 2014. Both attended the hearing and gave evidence [3].

3. First-tier Tribunal Judge Shergill stated in his 'conclusions' at [18], that he was 'not persuaded' that the important discrepancies set out at paragraph 14 of the refusal had been dealt with in a credible manner by either of the witnesses. Other aspects of the refusal had not been dealt with in a credible manner. All of the evidence before him had a number of discrepancies '... which have not been adequately explained on balance' and '... there has been active dishonesty in the evidence from both witnesses'.
4. He attached little weight to the evidence before him. An assessment of all the evidence led him to conclude that whatever the relationship may be between them, the appellant and Ms Khalid do not live together in a relationship akin to marriage. Furthermore, he concluded on the evidence before him at [18], that there is not a "genuine and subsisting parental relationship" between the appellant and C, - a British national child of Ms Khalid, "from her ex-husband" [2].
5. He then stated that if there is family life in existence, he saw no grounds why there could not be an out of country application made for the appellant to join Ms Khalid and that temporary separation will not interfere disproportionately with the appellant's rights or those of his partner or C in the light of his findings [18].
6. He did not accept that there were very significant obstacles to his integration in the light of his active ties to Pakistan, his status and age he came here and the comparatively short time he has been here [19].
7. With regard to the Article 8 claim, he was not satisfied that the appellant's case merited consideration outside the Rules because of the concerns he had about credibility and the state of the evidence [20]. There are no sufficient compelling reasons to consider his private life claims or his relationship claims with Ms Khalid outside the Rules. In any event, his very poor immigration history, active dishonesty, lack of demonstrable English language and creation of a private/family life while he was here precariously/unlawfully, would all weigh against him under s.117B of the 2002 Act. He cannot rely on s.117B(6) given his conclusions that there is no 'genuine and subsisting parental relationship' [20].
8. In granting permission to appeal, First-tier Tribunal Judge E M Simpson stated that the decision "... arguably disclosed disproportionate focus on the bona fides of the appellant's past history as a student, and arising thereto that arguably undue weight was placed on damaging credibility findings concerning same".
9. Further, she stated that "... when assessing whether he and his claimed partner were genuinely in a relationship outside marriage, there appeared that the Judge arguably materially erred in the credibility assessment, when expressly relying on their own assumptions concerning cultural and social norms, more especially arguably in the absence of objective evidence." She noted that the Judge stated that in his experience it was unusual to come across a couple living together without

being married for cultural reasons. The reason he asked this question was because, from his experience and understanding of Indian sub-continent cultures, such behaviour goes against cultural norms [13]. With regard to the judicial assessment of the appellant's documentary evidence, '... basis did appear that that assessment arguably further erred in there appearing focus on parts of that evidence to the arguable cost of other parts of same".

10. Ms Reid, who did not appear on behalf of the appellant before the First-tier Tribunal, referred to the grounds of appeal set out from paragraphs 5 to 11.
11. First, although the precarious status of the appellant was relevant, it should have been determined "to the limited extent," as paragraph 7 to 14 of the determination focused on the appellant's past educational activities at length. That was only one element in the consideration of whether the appellant and his partner had lived together in a relationship akin to marriage for a period of two years.
12. Secondly, she submitted that even if the appellant was not a bona fide student, there was sufficient documentary evidence submitted to prove cohabitation between them. She submitted that the fact that the appellant applied for another course after his first visa expired, which was based in London even though he was living in Manchester and could not travel, was not inconsistent with his account of living in Manchester with his partner at the time.
13. The Judge erred in taking into account that the bills relied on to establish cohabitation together were based on self reporting to the companies and were accordingly self serving. There had been no contention by the respondent relating to the authenticity of such bills. Various letters from the GP and other sources were provided before the hearing to the respondent to show that they had been cohabiting for more than two years. The Judge however made the finding regarding in regard to the documentation on the basis of his finding that the appellant's status had been tainted.
14. Thirdly, it was the Judge's personal opinion that it was unusual in his experience for them to live together without being married for cultural reasons. That rendered the decision flawed. It was the appellant's and his partner's own choice to live either as married or unmarried partners. The appellant stated that they did not want to get married yet. The Judge wrongly determined how the appellant should have behaved culturally. Ms Reid submitted that the Judge failed to assess the evidence as a whole.
15. On behalf of the respondent, Ms Isherwood referred to and adopted the Rule 24 response. She submitted that there has been no material error in the circumstances. The argument is essentially based on the amount of weight that the Judge attached.
16. She noted that the appellant himself accepted that he had been encountered illegally and he tried to run away. He was encountered during an enforcement visit to "Steak Out" in Manchester. He had run to the roof to evade officers, but was

however apprehended. He was then served with an enforcement notice as an overstayer and detained for removal.

17. She referred to [5], where the Judge stated that, having heard extensive evidence from the appellant and his partner, and considering all the documents before him in the round, he was not satisfied that he was being given a truthful account.
18. She noted that the Judge had referred to the appellant's interview record at [7] in which the appellant stated that he had worked at the restaurant since 2012. He admitted to the Judge during his evidence that during the time that he should have been studying, he was only at college for 18 months but "sometimes fortnights or months".
19. The Judge found that that was clearly not the action of a student committed to completing his studies. He gave a 'bizarre account' of applying for another course after his first visa expired. That was based in London even though he claimed to be living in Manchester and could not travel. He found that the appellant's evidence was vague about the course and he gave a bizarre account of "someone in the street helping him" apply for the visa. He was asked why he was not looking for courses himself but gave an equally bizarre and implausible answer - [7].
20. The Judge noted that he only attended that course twice despite his grant running for more than 18 months. He denied that he knew that it would be a requirement of his visa to attend the course and claimed he only knew he was illegal when he was caught. The Judge found that his entire account in that respect to be dishonest [7].
21. Ms Isherwood submitted that the Judge gave reasons for that conclusion. He found at [8] that the appellant had failed to plausibly explain why he was unaware of the curtailment. Further, he did not believe the account that he did not know that he had to attend his course for his visa to remain valid.
22. Further, his partner's accounts before him were also dishonest as she asserted a detailed account that the appellant had been attending his course, clearly contradictory to the appellant's own account. He found her evidence to be "simply dishonest on an important part of the backdrop to the case"- [8].
23. Ms Isherwood submitted that the Judge viewed the documentary evidence alongside the other evidence in the round [10]. She referred to the Judge's various comments and criticisms relating to the joint Barclays statements for four months in 2016. The document from Halifax showed that the appellant had an address on 4 July 2016. The assertion therefore that the Judge did not consider the documents is thus not correct. The assertions amount to a disagreement with the findings relating to the documents.
24. She referred to paragraph [11] of the decision where the Judge noted at [11] that the tenancy remains in the appellant's sole name. The GP letter produced was, he found, an advocacy letter on the appellant's behalf clearly instructed by information from the appellant. The doctor stated that "she reports". Nor was it stated how

long the appellant had been identified as the next of kin. The same criticism was made in respect of the school letter. In any event, he properly found that one might have expected it to have addressed issues such as parents' meetings and the like.

25. Nor was the context of photographs showing the appellant, his partner and child together in various situations properly explained. No evidence was given as to when and where they were taken. In any event on their own are not conclusive of family life, given the other discrepancies [12].
26. The Judge was also concerned that by the appellant's own admission he had applied for a course in London and whilst the reason for refusal was sent to a Manchester address, the partner's home address, the appellant's solicitors were based in Ilford. He gave his address where he could be contacted as his solicitors' in Ilford [14].
27. Ms Isherwood referred to [16] where the Judge referred to the evidence put forward about the extent of the appellant's involvement in the care and upbringing of his partner's child. He was not persuaded that the documentary evidence supported what was being claimed. The Judge's note relating to the occasions that he took the child to the speech therapist is set out at [16].
28. She referred to [17] where the Judge noted that the appellant asserted that he mostly went to the language therapist with the child, yet the mother's evidence was that there had been only one appointment. The report produced at page 90 relating to 2016 only refers to a discussion taking place with the mother. There is only reference to her in the 2018 report.
29. With regard to that evidence, the Judge stated at [17] that he would have expected the appellant to have been referenced or consulted if he was a de facto parent since 2014 as he claims to have been. His input to speech therapy, if he had been a de facto parent since the child was four years old to age six and eight, (the dates of the appointments), must be highly relevant given the milestone ages for the child's development. The fact that the appellant is not mentioned anywhere spoke volumes in his assessment "that matters are not as claimed." He was accordingly not persuaded on balance by any of the other evidence that it was satisfactory to show a genuine and subsisting parental relationship between the appellant and the child [17].
30. Ms Isherwood noted that in the event, the Judge found that requiring the appellant to leave the UK either permanently or to make an out of country application did not constitute a disproportionate interference with the Article 8 rights [23].
31. In reply, Ms Reid submitted that had the Judge not wrongly reached conclusions concerning the appellant's credibility, a different level of weight would have been given to the documentation. There has in the circumstances not been an adequate consideration and assessment of the evidence.

Assessment

32. First-tier Tribunal Judge Shergill has given a detailed assessment of the evidence produced in the appeal. As already noted, First-tier Tribunal Judge Simpson granted permission on the basis that the decision arguably disclosed a disproportionate focus on the bona fides of the appellant's past history as a student and that there was arguably undue weight placed on such findings relating to the credibility of the claim that they have been in a durable relationship.
33. No issue was taken with the service the Home Office minute sheet referred to by the Judge at [6] – purporting to represent the circumstances recorded when the appellant was encountered.
34. In the respondent's Rule 24 response, there was reference to the presenting officer's post hearing minute notes. Ms Isherwood produced the full minute of the presenting officer's notes, which were provided to Ms Reid and myself at the hearing. There was no objection to the production of that minute.
35. In the presenting officer's minute, she noted that she had submitted that the appellant's evidence that he had not complied with the terms of his visa or been truthful in his application, undermined his credibility of the genuineness of the claimed relationship. The appellant and his representative were given an appropriate opportunity to respond. The presenting officer stated that the appellant's representative asserted that these matters should have been raised in the refusal letter. She stated that that was an unfair submission given that the evidence of the appellant had only been produced at the date of the hearing and therefore could not form part of the refusal notice.
36. With regard to the documentary evidence of cohabitation, the HOPO minute noted that the representative also made submissions that this and many other documents could not be criticised by the Home Office as they had not raised those concerns in the refusal letter. The presenting officer noted at the end of counsel's submissions, that these documents had never been served on the respondent before the appeal and therefore could not have been part of the refusal notice. The Judge noted that this was correct, having regard to the covering letter.
37. I accept, as submitted by Ms Isherwood, that the Judge was entitled to have regard to the immigration history of the appellant as part of the assessment regarding the genuineness of the claimed relationship. As already noted, Judge Shergill found the whole of the appellant's account to be dishonest [7]. She adopted the rule 24 response that the appellant had already established a propensity to deceive and had shown that he was capable of undermining effective immigration control
38. Judge Shergill has set out the basis for his finding of dishonesty at [8]. I have set out his reasons for these findings. He also found that the appellant's partner's evidence before him, where she asserted a detailed account that the appellant had been attending his course, was clearly contradictory of the appellant's own account. He accordingly found her evidence "to be simply dishonest" on an important part of the backdrop to the case [8].

39. He was thus satisfied that the appellant was fully aware of his need to have valid leave; that the second leave was being obtained in bad faith and that he was aware that his leave had expired well before he was encountered, such that at least from November 2015, he was aware that he was not entitled to be working.
40. Judge Shergill has considered the appellant's current claim on the basis of the evidence in the round. This included the documentary evidence [10]. He has given sustainable reasons with regard to the findings in respect of the documentary evidence. He set out in some detail his assessment relating to the various bank statements, including the joint Barclays statements for four months in 2016, at [10]. There has been no challenge to his factual findings in that paragraph.
41. Nor has there been any challenge to the factual findings at [11] in respect of the bills produced. He has given sustainable reasons for attaching limited weight in particular to the GP letter on the basis that it was based on information from the appellant [11]. He also considered other documentation submitted including the school letter. He has set out his reasons for concluding that it only gave limited information, when it might be expected to address issues such as parent's evenings and the like [11].
42. He also had regard to assertions relating to the appellant's partner's health issues. This was relied on by the appellant as to why the financial requirements could not be met and why his partner could not work. He asserted that the child is picked up and dropped off partly due to her work, but then in oral evidence he stated that she cannot undertake childcare duties due to her health. Moreover, there was no plausible evidence before the Judge that she was unfit for work and indeed despite various references to her health issues, she is now undertaking a full time job in a physical role consisting of long days [12]. That, he found significantly undermined the claims made about health issues, aside from the implausibility that despite a physical job she cannot take her own daughter to school on her days off.
43. He had regard to the evidence of the photos, which he found were not on their own conclusive of family life given the other discrepancies.
44. It is also contended that the Judge inappropriately raised "cultural issues" which formed part of his assessment relating to the relationship. I was informed that the appellant's representative had been given an opportunity to respond. The Judge found that such responses did not satisfactorily explain the position. In any event, that finding was part of a rounded assessment of the evidence.
45. Further, he noted a significant discrepancy at [17] between the appellant's account and that of his partner relating to the taking of the child to the speech therapist. The appellant himself asserted that he mostly went to the language therapist with the child, however his partner asserted that they had only been to one appointment. The report in 2016 only referred to a discussion taking place with the mother. There is also only reference to the mother in the 2018 report. If the appellant were a de facto parent he would have expected him to have been referenced or consulted

since the child was four years old to age six and eight, the dates of the appointments.

46. At [18] the Judge summarised his findings: The evidence before him contained a number of discrepancies which had not been adequately explained on balance. Further, there had been active dishonesty in the evidence from both witnesses. In the circumstances he attached little weight to the evidence. He found that whatever the relationship between them may be, they did not live together in a relationship akin to marriage. Nor did the evidence establish that there is a genuine and subsisting parental relationship between the appellant and the child.
47. Judge Shergill has given sustainable reasons for those findings. It was on that basis that he concluded at [19] that there were not very significant obstacles to the appellant's integration to Pakistan. Further, the appellant was not able to rely on s.117B(6) having regard to his conclusion that there was no genuine and subsisting parental relationship. Nor were there any compelling reasons to consider his private life claims or his relationship with P outside the Rules [20]. He considered the child's best interests at [21]. He has given sustainable reasons for concluding that the respondent's decision requiring the appellant to leave the UK was proportionate in the circumstances.

Notice of Decision

The decision of the First-tier Tribunal did not involve the making of an error on a point of law. The decision shall accordingly stand.

Anonymity direction not made.

Signed Deputy Upper Tribunal Judge Mailer

Dated: 11 January 2019