



IAC-AH-V1

**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/03384/2020**

THE IMMIGRATION ACTS

**Heard at Field House
On the 16 August 2022**

**Decision & Reasons Promulgated
On the 25 August 2022**

Before

UPPER TRIBUNAL JUDGE KAMARA

Between

YUMAN AZAM
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE ENTRY CLEARANCE OFFICER

Respondent

Representation:

For the Appellant: No appearance

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

DECISION AND REASONS

Introduction

1. This is an appeal against the decision of the Entry Clearance Officer dated 15 January 2020 in which the appellant was refused leave to enter the United Kingdom on the grounds of his family life with his spouse, whom I will refer to as Evgenia.

Anonymity

2. No direction has been made previously, and there is no reason for one now.

Background

3. The appellant arrived in the United Kingdom with leave to enter as a student on 2 January 2002. Thereafter he applied for and was issued an EEA residence card, valid until 14 November 2010. An application for permanent residency as the spouse of an EEA national was refused on 16 May 2011. While the appellant initially succeeded at appeal, that decision was set aside on 11 April 2012. On 5 July 2012, the appellant applied for leave to remain on Article 8 grounds. That application was refused with no right of appeal and the judicial review challenge failed. The appellant made two further applications relying on his claimed relationship with an EEA national which were refused. He unsuccessfully challenged those decisions, and, on the last occasion, his appeal rights were exhausted on 7 August 2019. The appellant made a voluntary departure from the United Kingdom during May 2019. He married Evgenia, in Pakistan during September 2019.
4. On 13 November 2019, the appellant applied for leave to enter the United Kingdom on the grounds of his family life with Evgenia. That application was refused primarily owing to the application of paragraph 320(11) of the Immigration Rules. The ECO was satisfied that the appellant's conduct while in the United Kingdom meant that he had contrived in a significant way to frustrate the intentions of the Immigration Rules. Paragraph EC-P.1.1 of Appendix FM was separately considered, however the application was refused on suitability grounds, specifically S-EC.1.5 as the exclusion of the appellant was thought to be conducive to the public good, as well as S-EC.3.1 because records showed that the appellant had failed to pay litigation costs of £400 awarded to the Home Office.
5. The ECO did not accept that the appellant met the eligibility financial requirements because he had not submitted evidence of taxes paid by his sponsor for the last financial year nor of her personal bank statements which demonstrated her pay. Evidential flexibility was not applied as the application fell for refusal on other grounds. There were said to be no exceptional circumstances to consider. The ECO accepted that the eligibility relationship and language requirements of the Rules were met.
6. An Entry Clearance Manager reviewed the decision on 15 April 2020 and while the decision was maintained in respect of suitability and paragraph 320(11) of the Rules, it was accepted that additional evidence had been provided which showed that the eligibility financial requirements had been met.

The decision of the First-tier Tribunal

7. When the appeal was heard on 27 April 2021, the Judge Plowright was satisfied that the litigation debt of £400 had been paid owing to a receipt from the Home Office dated 10 March 2020 showing that it had. The judge did not accept that the various applications made by the appellant were frivolous and concluded that the application ought not to have been refused under paragraph 320(11) of the Rules or on suitability grounds and he was persuaded that it would be disproportionate to maintain the respondent's exclusion from the United Kingdom.

The error of law hearing

8. Following an error of law hearing which took place on 24 May 2022, the decision of the First-tier Tribunal was found to contain a material error of law owing to a paucity of reasons for the conclusion that there were no aggravating factors which justified the refusal of leave to enter. The full reasons are set out in the decision promulgated on 9 June 2022.

Remaking hearing

9. On 16 August 2022, this appeal was listed for a continuance hearing. On 1 August 2022, the appellant's previous representatives wrote to the Upper Tribunal to remove themselves from the record. The Upper Tribunal were invited to communicate directly with the appellant and sponsor.
10. On 7 August 2022, the sponsor, Evgenia, sent an email to the Upper Tribunal in which she stated the following.

Dear Sirs

Re Mr. Yuman Azam HU/03384/2020 DOB: (**REDACTED**)

I am currently a sponsor/appellant of the above mentioned Mr. Yuman Azam.

I am writing to advise that I am no longer prepared to support application of Mr. Yuman Azam and will not be attending the court.

I confirm that my relationship with Mr. Yuman Azam no longer subsists, that I do not live with them and that I do not intend to live with them as my spouse in the future.

Mr. Yuman Azam's email (**REDACTED**)

I fully understand that by giving my permission, the information above will become known to Mr. Yuman Azam.

Yours sincerely,

Evgenia (**REDACTED**)

DOB (**REDACTED**)

11. When this matter came before me, there was no appearance by or on behalf of the appellant. In view of Evgenia's email, I invited submissions from Mr Melvin. At the end of the hearing, I dismissed the appeal.

Discussion

12. The main issue in this appeal is whether there were other aggravating factors which justified the decision to refuse the appellant leave to enter the UK. The aggravating factor relied upon by the ECO was that the respondent had made frivolous applications. Doubts surfaced about the appellant's previous marriage when a Ghanaian national sought a residence card following his marriage to the appellant's former spouse. The appellant continued to rely on this claimed relationship to support three further applications and appeals, the last of which was dismissed in 2019. The appellant's appeals against all three of his attempts to obtain permanent residence based on a marriage of convenience were dismissed. In addition, the appellant was refused permission to proceed with both his judicial review applications because the applications were 'totally without merit.'
13. In essence, the appellant extended his time in the United Kingdom by pursuing a series of applications and appeals, over a 15-year period, relying on what was consistently found to be a marriage of convenience. It follows, that the residence card issued to the appellant between 2004 and 2010 was obtained by deception.
14. In the absence of any argument or evidence to contradict the above facts, I conclude that the appellant previously contrived in a significant way to frustrate the intentions of the Rules by using deception in an application to obtain documents from the Secretary of State. The making of frivolous applications with no hope of a positive outcome, amounts to an aggravating factor. Accordingly, the respondent was entitled to refuse the entry clearance application with reference to paragraph 320(11) of the Rules. For the same reasons, I find that the exclusion of the appellant from the UK is conducive to the public good owing to his conduct which makes it undesirable to grant him entry clearance. As such he also fails to meet the Suitability requirement, with reference to S-EC.1.5 of the Rules.
15. This is a human rights appeal where the appellant is unable to meet the requirements of the Immigration Rules. In addition, as at the date of the hearing, the sponsor is no longer prepared to support the appellant's application for entry clearance. The effect of this change of circumstances, is that the appellant cannot meet the relationship requirements of the Rules because his relationship with his spouse is no longer subsisting. In addition, there is no family life to be considered in terms of Article 8 ECHR. In these circumstances, the decision to refuse entry clearance does not amount to an interference with the appellant's right to a family life. For completeness, even had the relationship remained subsisting, there was no evidence before me to suggest that a refusal of entry clearance would be a disproportionate outcome when balanced against the appellant's immigration history and conduct, which includes deception.

Decision

The appeal is dismissed.

Signed: T Kamara

Date: 17 August 2022

Upper Tribunal Judge Kamara

TO THE RESPONDENT
FEE AWARD

I have dismissed the appeal and therefore there can be no fee award.

Signed: T Kamara

Date: 17 August 2022

Upper Tribunal Judge Kamara

NOTIFICATION OF APPEAL RIGHTS

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within the **appropriate period** after this decision was **sent** to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent:
2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically)**.
3. Where the person making the application is in detention under the Immigration Acts, **the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically)**.
4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days (10 working days, if the notice of decision is sent electronically)**.
5. A "working day" means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.
6. The date when the decision is "sent" is that appearing on the covering letter or covering email.