



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-001509

First-tier Tribunal No: HU/55529/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 18th of September 2024

Before

DEPUTY UPPER TRIBUNAL JUDGE SKINNER

Between

MR MUAHAMMAD RASHID
(NO ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Z. Nazim, Counsel, instructed by Legal Rights Partnership
For the Respondent: Mr C. Bates, Senior Home Office Presenting Officer

Heard at Field House on 3 September 2024

DECISION AND REASONS

1. The appellant is a citizen of Pakistan. He applied for leave to remain as the partner of a British citizen under appendix FM of the immigration rules. The respondent refused that application on 17 April 2023. He appealed to the First-tier Tribunal ("FTT") on the grounds that the respondent's decision breached his article 8 rights to a family and private life. By a decision dated 21 February 2024 the FTT dismissed his appeal. He now appeals with permission to this Tribunal.
2. The only basis of the respondent's decision to refuse the appellants application was that *"the Home Office has received notification that there is a marriage/relationship breakdown between you and your partner Maniza Begum."* It was pointed out by the appellant's representatives prior to the hearing before the FTT that this was based on a mistake and the respondent was unable to substantiate this allegation before the FTT.

3. Nonetheless, the FTT considered that the issue of the whether the appellant's and his wife's relationship was genuine and subsisting was, as a result of the respondent's refusal, effectively at large and it proceeded to consider for itself that question. The FTT concluded that the appellant had not shown that their relationship was genuine and subsisting.

4. The FTT's reasoning on this issue is set out at paras. 11-14, as follows:

"11. Although the appellant claims he is in a subsisting relationship with the sponsor, the appellant has failed to provide any supporting evidence of their relationship. Many of the documents provided in support of the claim, are in the sponsor's name at the address they claim they share, such as a council tax document. The appellant has provided bank statements in his sole name for the years 2020, 2021 and 2022, in addition to two water bills at the address, dated in February 2021 and 2022. I note however there are no documents in joint names.

12. I find the documents provided only demonstrate that the appellant has had documents sent to this address in his name, but it does not support the claim that he is in a genuine or subsisting relationship with the sponsor. I do not find the appellant has provided any supporting evidence to show they are in a genuine relationship.

13. I note the sponsor has four adult children in the UK. Given the length of time the couple claim they have been together, one would expect a witness statement or some other supporting evidence from the children. I find their absence at the hearing and their silence about the relationship speaks volumes. This further causes me to doubt the appellant's claim regarding his relationship. I note a lack of any supporting evidence from the sponsor's siblings and family in the UK. Had the relationship been genuine, I find they would have been eager to assist with the appellant's case. I find the appellant has failed to provide sufficient evidence to show, he is in a genuine and subsisting relationship with the sponsor.

14. Accordingly, I find the appellant has failed to show he has a family life in the UK"

5. The appellant's second ground of appeal is that the FTT failed, in relation to the question of whether the appellant and his wife have a genuine and subsisting relationship and therefore enjoy family life together for the purposes of article 8, to set out or engage with the non-documentary evidence given by the appellant and his wife. Both had produced witness statements and were cross examined by the respondent's Presenting Officer at the hearing, but the FTT makes no mention of this evidence.

6. In a case where various documents indicate that the postal address used by each of the appellant and his wife is the same, but none is addressed to both of them together questions inevitably arise as to whether they are living together and/or are in a relationship. The answers given by the appellant and his wife in relation to these issues in their oral evidence and the extent to which they are considered credible in their answers will normally therefore be of central importance. Here however, the FTT has not considered the oral evidence given by the appellant and his wife, but has limited its assessment to the documentary evidence (paras.11-12) and the lack of evidence provided by other family members. Mr. Bates conceded that this omission to consider the oral evidence that was given was a material error of law, and I agree.

7. Both parties agreed that, in the circumstances, there was no need for me to address the appellant's first and third ground of appeal, the appeal should be allowed, no findings should be preserved and the appeal should be remitted to the FTT for hearing *de novo*.

Notice of Decision

The decision of the First-tier Tribunal involved the making of an error on a point of law and is set aside. The appeal is remitted to the First-tier Tribunal for redetermination *de novo*.

Paul Skinner

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

8 September 2024