

THE IMMIGRATION ACTS

Heard at Field House
On 25 July 2013

Determination Promulgated
On 26 July 2013

Before

Upper Tribunal Judge Kekić

Between

Amarjit Singh

Appellant

and

Secretary of State for
the Home Department

Respondent

Determination and Reasons

Representation

For the appellant:

Unrepresented

For the respondent:

Mr L Tarlow, Senior Home Office Presenting Officer

1. This appeal comes before me following the hearing on 13 June when I found an error of law in the determination of the First-tier Tribunal Judge. That decision sets out the background and issues and I therefore reproduce it below:

1. This appeal comes before me following the grant of permission to appeal by First-tier Tribunal Judge Pooler on 7 May 2013. The appellant is a citizen of India born on 27 September 1990. He entered the UK as a student on 9 January 2011 and with leave until 17 August 2012. On 29 June 2012 he applied to remain as the spouse of the sponsor, Shirley Ann Singh (neē Oughton), a British national whom he married on 19 January 2012. His application was refused on 27 November 2012 under paragraph 286 of HC 395 with reference to 284 (viii) on the basis that he would be unable to be maintained without recourse to public funds.

2. When the appeal came before First-tier Tribunal Judge Malins at Hatton Cross on 26 March 2013, the presenting officer raised additional issues regarding the subsistence of the

marriage and whether the parties intended to live together permanently as husband and wife (paragraph 284 vi). There being no objection raised by the appellant's representative, the judge permitted the additional issues to be introduced. It was clarified that this being an application made prior to 9 July 2012, the old rules would apply. The judge heard oral evidence and concluded that although the sponsor was sincere in her intentions, the appellant was not. She also found that the appellant's earnings were insufficient to maintain him and his wife. The appeal was accordingly dismissed by way of a determination promulgated on 19 April 2013.

3. The appellant, no longer represented, sought and obtained permission to appeal and the matter then came before this Tribunal on 13 June.

4. The appellant challenges the determination on the basis that the judge dismissed his appeal because he did not fit her expectation of a stereotypical Sikh and that she gave inadequate reasons for rejecting his marriage as genuine. It is also argued that the judge did not have regard to the fact that he has not had recourse to public funds and is partially supported by his uncle.

5. The appellant, his wife and her son, Luke, attended the hearing before the Upper Tribunal. I heard from all three and then from Mr Tarlow and at the conclusion of the hearing I indicated that I would be setting aside the determination of the First-tier Tribunal. I now give my reasons for so doing.

Reasons and conclusions

6. It is fair to say, and I hope the appellant and his wife will not take offence, that their relationship and marriage is unusual given the age difference between them and their differences in background and culture. However that in itself does not mean they do not have a genuine and subsisting marriage.

7. The judge appears to have rejected the marriage as genuine, at least from the appellant's point of view, because she did not believe that a Sikh man would marry a white Western woman, a permanent smoker, older than him and from whom he would receive no dowry. She did not believe that the appellant's parents would approve of the marriage and she found it unnatural that the sponsor should have a grandchild making the appellant a step grandfather at his age. Whilst, as I have already said, the partnership between appellant and sponsor is unusual, it is not a reason to assume it is a sham. The judge has speculated to a large extent over how a Sikh would behave and it does not appear that she put this matter to the appellant or to his representative at the hearing so that it could be addressed. There was evidence before her of the sponsor having cut down drastically on her smoking following her marriage but this was not considered.

8. The judge questioned the sponsor as to whether she watched Bollywood films (paragraph 8) and then drew adverse inferences from the fact that she did not watch the same films as the appellant (paragraph 11a(ii)). This is a weak basis on which to form an adverse view. The appellant has said he does not watch many films in any event and even if they liked different kinds of films I cannot see how this means their relationship is not genuine.

9. *The judge considered that the ceremony was low key and noted that the sponsor still used her maiden name. These were additional matters used against the appellant. Again, they are not matters which detract from a genuine relationship. Had the judge put them to the parties she would have discovered that in fact the sponsor has not retained her maiden name and has changed all her official documents and that the wedding was simple because money is tight.*

10. *The judge found that the appellant was not on the council tenancy agreement and that the council had not been informed of his occupancy. However the evidence before her at the hearing was that the council had been informed but that they wanted the marriage certificate (which is with the respondent) before the appellant can be included as an occupant. This evidence was disregarded.*

11. *The judge noted that third party support was provided from the appellant's uncle but did not believe he would approve of the marriage either. She did not, however, consider this financial support when assessing the adequacy of maintenance nor is there any analysis of the couple's actual expenditure or of the sponsor's income.*

12. *It would appear, having read the determination, that the judge was influenced by her personal perceptions of how a man in the appellant's position should behave and that her negative decision stemmed from that. She gave no weight to the fact that the appellant was here lawfully, that he married the sponsor whilst he still had several months left on his visa and that he did not rush into making his spouse application as soon as the marriage had taken place. He also always worked in accordance with the hours allowed under his student visa. Although the judge made disparaging comments about there being nothing said about his studies (paragraph 3), there was evidence before her to show the qualifications he had achieved.*

13. *Indeed, the appellant submitted a large amount of documentary evidence which included an offer of full time work from his current employer, family photographs, evidence of funds, evidence of cohabitation (showing that the appellant was registered with the council for voting at the sponsor's address) and supporting statements from the sponsor's daughters and son and from the appellant's uncle. None of this evidence has been factored into the judge's findings.*

14. *For these reasons I find that the judge made errors of law such that her determination is set aside. No findings are preserved.*

15. *The hearing has been adjourned to come back before me on 25 July 2013. All further documentary evidence must be served upon the Tribunal and the respondent no later than 15 July.*

Appeal Hearing

2. The appeal then came before me as arranged on 25 July 2013. In compliance with directions a bundle of documents has been received by the Tribunal consisting of witness statements from the appellant, his wife, her son, Luke, the appellant's father, mother, sister and maternal uncle, Lloyds Bank statements, various utility

bills, an Oriental Bank of Commerce statement and evidence of foreign money transfers. I also have on file the documents submitted in respect of the earlier hearing before the First-tier Tribunal. A letter from Southwark Council was submitted by the appellant at the hearing.

3. The appellant and his wife attended the hearing and both gave oral evidence. The appellant confirmed that the bank statements in the bundle related to his account. Certain transactions had been marked to show that he made payments to contribute to the household such as payments for a sofa from DFS and the telephone bill. The statement from the Oriental Bank of Commerce was in respect of his maternal uncle's account and showed two transfers of money to the appellant on 30 May and 3 December 2012 equating to £3,3000 and £7000 respectively. The money transfers were from his brother in Germany; he had sent the appellant £1500. The appellant confirmed that he was currently supported by his family because he was only able to work 10 hours a week and his income was £61.90 per week plus travel expenses from that employment. He stated however that once his status was resolved. He had the offer, as confirmed by letter, of a full time job.
4. In cross examination the appellant stated that he had the option of a sales assistant with his current employers. Alternatively he could seek work as a grounds assistant at the airport as he had done the necessary training. He also had qualifications in hospitality management and so could look for work in that area. The appellant confirmed that he had only recently received the letter from the council. He had not been given an appointment until 15 July. He described his uncle as wealthy, having property, land and seven shops. He said he had a large family in India. The appellant said that his wife would not want to live in India because she had children, grandchildren, a mother and sister here and would not want to leave them. Additionally she did not speak the language and people were less broad minded there and she would not fit in. he said that they would go for holidays though and wanted to arrange a reception there. The appellant stated that his brother was a German citizen.
5. In response to my questions the appellant said that he had never claimed any benefits in the UK and never wanted to. He said his wife had never visited India. In fact, she had never travelled outside the UK and had only obtained her passport last year. He confirmed that Luke still lived with them. He had been unable to attend the hearing due to a prior commitment. Mr Tarlow had no questions arising.
6. I then heard evidence from Shirley Ann Singh (nee Oughton). She relied on her statement. In response to Mr Tarlow's questions, she stated that she had three children all over 18. She did not work but had six years of experience as a teaching assistant. She had transferred a bingo winning into the appellant's account. Her sole income was her Job Seeker's Allowance. The tenancy was in her name and the rent was part paid by the council and part by herself and the appellant; they also paid council tax. The witness stated that she had never been to India or anywhere else. She would not want to live in India and was terrified of the thought of flying.

7. In response to my questions, the witness stated that her son, Luke, still lived with them. He was due to go back to college in September. She had a good relationship with him and her two daughters. Both had a child each and one was expecting her second. She stated that that daughter, Louise, was due to visit her later today. She lived in Orpington. Her other daughter was currently in the Caribbean. The witness' mother was alive and lived in Orpington and she had a brother, sister and a stepsister. When asked how she would feel if she had to leave her family, she said she would not be willing to do that. The witness confirmed that she had not claimed any additional public funds since the appellant had been living with her. Mr Tarlow had no questions arising and that completed the oral evidence.
8. I then heard submissions. Mr Tarlow accepted that the marriage between the appellant and the sponsor was genuine and subsisting. He also confirmed, as had the presenting officer at the last hearing, that I had to consider the pre 9 July Immigration Rules. It was also agreed that Article 8 did not arise in this case as no decision to remove the appellant had been made. He submitted that the issue before me was whether the appellant could be maintained without additional recourse to public funds. He submitted that apart from the oral evidence, there was nothing to show the details of the sponsor's benefits. The issue was a narrow one but the Tribunal had to be satisfied that the appellant would be adequately maintained.
9. In response the appellant submitted that his wife only received Job Seekers' Allowance. He submitted that evidence of that had been provided when he made his application to the Secretary of State. The social fund loan which is referred to in the documents on file had been paid off. The sponsor now received £71 per week.
10. At the conclusion of the hearing I indicated that I would be allowing the appeal. I now give my reasons for so doing.

Findings and conclusions

11. Mr Tarlow very fairly conceded that the marriage of the appellant and sponsor was genuine and subsisting. I would say here that I would have found in their favour on this point had the concession not been made. Despite the unusual nature of their relationship, i.e. the age gap and the difference in culture and ethnicity, they plainly have a solid marriage as is indicated by the substantial amount of oral and documentary evidence before me. I give great weight to the evidence of Luke Oughton as contained in his statements and his oral testimony at the previous hearing. He has lived with his mother and the appellant since their marriage and has direct first hand knowledge of their relationship. I accept his evidence when he states that he would not be backing the marriage if he had any doubts as to the appellant's intentions. I also found the appellant and his wife to be impressive and persuasive witnesses.

12. The only live issue, therefore, is whether the appellant meets the requirements of the pre-9 July 2012 Immigration Rules with regards to maintenance. I find that he does.
13. There is evidence that the appellant earns £61.90 (plus travel expenses) per week. His wife's evidence, which I accept, is that she receives £71 in job seekers' allowance. She has not made any additional claim for public funds since the appellant moved in with her. There is confirmation from Southwark Council that the appellant is not able to be recorded as a joint tenant with his wife because he is not in receipt of benefits. There is documentary evidence to show that the appellant is financially assisted by his maternal uncle and his brother. Finally there are his bank statements which show a healthy balance. I also take account of the fact that the appellant has an employment offer for full time work. For all these reasons I conclude that there has not been any additional recourse to public funds by his wife during the course of their marriage and there is no reason to believe there will be in the future. No other reasons for refusal are relied on by the respondent.
14. There is no reliance on Article 8 because no removal directions have been set.

Decision

15. The First-tier Tribunal made errors of law. The determination is set aside. I remake the decision and allow the appeal under the Immigration Rules.

Signed:

**Dr R Kekić
Judge of the Upper Tribunal**

25 July 2013