



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: OA/14045/2012

THE IMMIGRATION ACTS

Heard at Field House

On 25 April 2013

Determination

Promulgated

On 12 July 2013

Before

UPPER TRIBUNAL JUDGE CONWAY

Between

**MUHAMMAD JAHANGIR ASIF
(NO ANONYMITY DIRECTION MADE)**

Appellant

and

ENTRY CLEARANCE OFFICER - ISLAMABAD

Respondent

Representation:

For the Appellant: Ms Uzma Rehman (Sponsor)

For the Respondent: Mr Bramble

DETERMINATION AND REASONS

1. Mr Asif, to whom I will refer as the appellant as he was before the First-tier Tribunal, although he is strictly speaking the respondent before me, is a citizen of Pakistan born in 1958. He appealed against a decision of the Entry Clearance Officer, Islamabad on 4 July 2012 to refuse entry

clearance under paragraphs 319C(a), (b), (c), (d) and (e) and 320(7A) of the Immigration Rules.

2. The appellant sought entry clearance to join Uzma Rehman, a Tier 1 PBS migrant in the UK, as her spouse. The application was refused because the respondent was satisfied that marriage documents submitted were false because the issuing authority, NADRA, had indicated that they did not have any record of his marriage to Uzma Rehman. Further, NADRA's records indicated that he was married to someone else, Shazia Jehangir, and has three children by her yet on the Visa Application Form dated 7 June 2012 had declared that he had no children. The information about his wife and children was contained in a document verification report dated 26 June 2012.
3. He appealed. The grounds of appeal were in general terms only.
4. Following a hearing at Taylor House on 6 February 2013 Judge of the First-tier Tribunal Brenells allowed the appeal under the Immigration Rules. It seems he did so in respect of paragraph 320 (7A). It is not clear that having done so he then went on to consider the refusal under paragraph 319C. He dismissed it on human rights grounds (Article 8).
5. In his determination the judge noted a statement dated 11 January 2013 from the appellant in which he said that he is married to Ms Uzma Rehman whom he had married with the permission of his first wife, Shazia Jehangir. His marriage document was registered on 25 October 2010 in the record of the Union Council. Although not at that time registered with NADRA it was nonetheless a valid and genuine marriage. The marriage document was supported by an affidavit from the person who solemnized the marriage. A computerised certificate of registration of marriage was issued by the Secretary of the Union Council on 30 May 2012 and the date communicated to the office of NADRA on 25 July 2012. They subsequently issued a new certificate to Ms Rahman by entering her name as the appellant's wife.
6. The sponsor's statement adopted in oral evidence at the hearing was in near identical terms. She maintained that the marriage certificate should have been verified with the Union Council instead of NADRA. No false documents were submitted with the application form.
7. The judge noted an affidavit from Shazia Jahangir, the appellant's first wife in which she stated that she consented to his second marriage although there was no evidence as to the date on which she gave consent.
8. The judge in his findings noted that nowhere in the application did the appellant indicate that he was married to his first wife [15]. This was only disclosed when enquiries were made by the Document Verification Officer. Nor did he disclose in the application that he had three children although the form specifically asks whether applicants have children [15].

9. On the issue of the marriage certificate the judge noted that an item in the translation asked 'whether the bridegroom has any existing wife, and if so whether he has secured the permission of the Arbitration Council under the Muslim Family Laws Ordinance 1961 to contract another marriage', and that the answer given reads 'N/A'. The judge stated that 'that information was incorrect and no evidence has been provided to show that the necessary permission had been obtained from the first wife and the Council prior to the marriage'. Also, in an English version of the marriage registration certificate it gives the appellant's marital status as 'virgin' which the judge took to be a mistranslation for 'single'. The judge considered that this error may have been caused by the registrar taking incorrect information from the marriage certificate. However, 'the errors on both certificates would have been obvious to both the appellant and the sponsor and they have said nothing in relation to these errors' [18].
10. As for the lack of information about children, the judge noted the appellant's statement that he filled out the application form 'with a mind set as a couple with Ms Uzma Rehman and since we as a couple do not have children together from this wedlock as yet hence my answer was "no" ' [16]. Ms Rehman's position was virtually identical.
11. The judge in his conclusion about the appellant's wife [at 17] said that there is no provision in the Rules which would bar the application simply because he has two wives. There was therefore 'no need for him to conceal either the existence of his first wife or her children. Nevertheless, both the appellant and the sponsor are highly educated people, both are qualified lawyers'.
12. He stated [14] 'Only the document verification report was adduced on behalf of the respondent in relation to the validity of the appellant's marriage to the sponsor. No further evidence was submitted to establish that the appellant's marriage to the sponsor was not valid'.
13. And, later, 'Despite the fact that there are errors on the face of the marriage certificate and the marriage registration certificate, and there is no evidence that the appellant has secured the permission of the Arbitration Council under the Muslim Family Laws Ordinance 1961 to contract another marriage, the respondent has failed by not investigating these matters to discharge the burden of proof of showing that the marriage is not valid' [21].
14. As for non-disclosure of the children the judge stated 'The form says nothing about the paternity or maternity of any children. I do not therefore accept that the failure to declare his children was not a deliberate attempt at concealment by the Appellant' [17].
15. He went on, however, to state that he had to consider whether or not the failure to disclose the existence of his children 'amounts to a failure to disclose a material fact' [22]. Noting a definition of 'material' in a Court of Appeal case in 1998 as whether 'the facts not disclosed would be likely to

have influenced [the respondent's] decision' [25], the judge concluded that they 'would not because the fact that the appellant has three children in Pakistan would make it more likely that he would have returned to Pakistan on the expiration of his visa' [26].

16. The respondent sought permission to appeal which was granted on 15 March 2013 by Deputy Upper Tribunal Judge Bowen who stated:

“ ...

2. *The grounds that the Respondent assert that the judge in his conclusions on the burden of proof relating to false documentation is unlawful given that contrary to what the judge found the Entry Clearance Officer it is claimed provided evidence to substantiate the allegation that documents that had been produced were forged and that the Appellant's marriage was not valid. It is also asserted that the judge erred in his approach to Article 320(7A) refusal which it is contended by the Respondent does not need to have an additional mens rea where it has been shown that a false document has been relied upon as opposed to false representations having been made. It is submitted that the judge's findings on the Document Verification Report undermine his conclusions on false representations in relation to the claim that the Appellant is married to a person in the United Kingdom.*
3. *It is further asserted that the judge made a material misdirection in law in finding that the Appellant's false representations as regard to a failure to disclose children are perverse. That the failure to disclose three children is clearly material to the application to enter under the provisions of 319C as it would inevitably alert the decision maker to the fact that there was a previous relationship. The failure to disclose details of the children would have been an attempt to prevent the Respondent from asking further questions and making checks on the information contained in the Visa Application Form.*
4. *Examination of the application form for entry clearance and supporting documents and having regard to the fact that the Appellant and his Sponsor are educated individuals it would appear despite the explanations given by the Appellant as to the omission of information that this may have been a deliberate attempt on the part of the Appellant to enhance the success of his application. The arguments put forward by the Respondent in the grounds of application and in particular the judge's findings in paragraph 22 of his determination do suggest that there are arguable errors of law which have been identified, therefore permission to appeal is granted.”*

17. At the error of law hearing Mr Bramble had little to add to the grounds seeking permission. In essence, the ECO had provided evidence to

substantiate the allegation that the marriage documents were forged and the marriage not valid. The fact that the judge himself found further reason in the documents to question their authenticity could not be used as a lawful reason for finding that the ECO did not satisfy the burden on him in the first place.

18. Further, the failure to disclose the existence of the three children, found by the judge to have been deliberate, was clearly material to the application. He should have found that false representations had been made and that as a result the appeal had to fail.
19. In reply Ms Uzma Rehman, the sponsor, lodged a skeleton argument in which she repeated that the marriage documentation was genuine: 'Improper and inefficient inquiry has been made by the ECO in a casual manner by just relying upon the NADRA office where the process of registration has not been reached from the Office of Union Council ... by that time. The ECO did not bother to verify the document from the issuing authority which is the Union Council ...' Documents had been supplied from the Secretary of the Union Council and the 'ultimate authority', NADRA which 'clearly negate the findings of the ECO on one hand and on the other hand prove the genuineness of the ... marriage'.
20. Further, any errors in the marriage documents were not those of the appellant who did not complete them but rather those of the solemnizer of the marriage ('such people having only religious knowledge and usually uneducated') and the translator into English who 'inadvertently' wrote 'N/A', and the software system which automatically picked up the word 'virgin. There was no bad faith on the part of the appellant.
21. Finally, about the children she and the appellant had a 'mind set as their own couple without having any children from this wedlock'. There was no section in the form about any previous marriage and any children from a previous marriage. There was no fault on the part of the appellant in the filling out of the form. There was nothing to be gained by hiding that information.
22. I reserved my determination.
23. In considering this matter I look first at the judge's treatment of the false marriage documents allegation. As the judge noted, the ECO relied on a document verification report in which the officer stated that he was not satisfied that statements and marriage documents were genuine because the issuing authority NADRA stated that they had no record of his marriage to Uzma Rehman. Rather, that he was married to someone else and had three children. He had also declared in the application form that he had no children.
24. The judge correctly noted (at [7]) that in an appeal arising from the refusal of an application under paragraph 320(7A) the burden of proof is on the respondent to establish on a balance of probabilities that the requirements

of that paragraph are made out. However, in my judgment he erred in stating (at [21]) that the respondent failed by not investigating the information on the face of the marriage documentation and thereby had not discharged the burden of showing that the marriage is not valid.

25. I agree with Mr Bramble that the ECO did in fact provide evidence, namely the document verification report, to substantiate the allegation that the marriage documents were not genuine and false representations made for the reasons given in the report. The respondent has taken all reasonable steps to establish the genuineness or otherwise of the marriage documents which were presented. I am satisfied that this provides ample, cogent evidence to establish the respondent's conclusion to the required standard. The judge having himself found (at [18]) further reasons in these documents to question their authenticity, reasons which he was entitled to reach on the evidence before him, it was irrational for him to then find that the ECO had not satisfied the burden. It seems to me on the facts found by him about the marriage documents the judge was required to conclude that the ECO had satisfied the burden and thus, dismiss the appeal under paragraph 320 (7A) of the Immigration Rules.
26. Even if I am wrong on that matter there remains the issue of the non-disclosure of the appellant's children.
27. As indicated the judge noted that the application form specifically asked whether the applicant had any children. The form says nothing about the paternity or maternity of any children. The appellant and sponsor are both highly educated. On the evidence before him the judge was entitled to disbelieve the evidence of the appellant and sponsor that they decided not to enter details of his children 'because the form asks about me and my husband' [16]. The judge was entitled to conclude that the appellant was required to declare all children whatever their parentage and that in not doing so such was a deliberate attempt at concealment by the appellant [17].
28. The judge noted the terms of paragraph 320(7A) and the case of **AA Nigeria v SSHD [2010] EWCA Civ 773** where it was stated that dishonesty or deception is needed to render a false representation a ground for mandatory refusal.
29. The judge went on, however, to consider that, whilst deliberate, the false representation about the children was not material because the fact that he has children in Pakistan would make it more likely that he would have returned to Pakistan on the expiry of his visa.
30. Whether the deliberate concealment of the existence of his children in the application was or was not material does not matter because the judge, despite quoting the text of paragraph 320(7A), failed to note that it states 'where false representations have been made or false documents or information have been submitted (**whether or not material to the application** [my emphasis] ... [entry clearance is to be refused]'

31. The judge erred in his application of the law. He has confused a false representation with non disclosure of a material fact. On the facts as found by him, namely, the answer that the appellant did not have children when he has three, and that such answer was deliberate and dishonest for the purpose of obtaining the clearance, such amounted to a false representation. The only conclusion open to him on that aspect of the case as well was to dismiss the appeal under paragraph 320 (7A) of the Immigration Rules.
32. Despite having allowed the appeal under the Rules the judge went on to dismiss it on human rights grounds (Article 8). He seems to have accepted that there is family life between the appellant and sponsor and then to have advanced to proportionality. In a brief analysis he noted that the sponsor chose to marry on the day before she left Pakistan to study in the UK. Instead of returning to Pakistan when her studies ended she chose to remain in the UK tutoring children and working part-time as a shop assistant rather than rejoining her spouse and resuming her work as a lawyer or using her newly acquired qualifications in some other way. He also noted that the appellant, the senior partner of a law firm, had said nothing to explain how he would wish to spend two years in the UK. The judge also noted that the ECHR does not give couples the right to choose where they wish to live. These were conclusions he was entitled to reach on the evidence.
33. It was not submitted that, even in the absence of the findings and conclusions on deception that the judge should have made, his decision to dismiss on human rights grounds was materially flawed and that decision stands.

Decision

The First-tier Tribunal made an error of law in the making of its decision.

That decision is set aside and remade as follows:

The appeal is dismissed under the Immigration Rules.

The decision to dismiss the appeal on human rights grounds stands.

No anonymity direction is made.

Signed

Date

Upper Tribunal Judge Conway