



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

Appeal Number: IA/06662/2014

THE IMMIGRATION ACTS

**Heard at Bradford
On 7 August 2014**

**Determination
Promulgated
On 14 August 2014**

Before

UPPER TRIBUNAL JUDGE CLIVE LANE

Between

NOOR AHMAD MAJEED

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Piper, Henry Hyams

For the Respondent: Mrs Pettersen, a Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant, Noor Ahmad Majeed, was born on 20 April 1983 and is a citizen of Pakistan. He has appealed against a decision of the respondent made 18 September 2012 to refuse him leave to remain in the United Kingdom. His application was refused on the basis the appellant failed to fulfil the requirements of Appendix FM or paragraph 276ADE of HC 395 (as

amended). The appellant appealed to the First-tier Tribunal (Judge Hindson) which, in a determination promulgated on 15 April 2014, dismissed the appeal. The appellant now appeals, with permission, to the Upper Tribunal.

2. For the avoidance of doubt, I explained to the representatives that all the grounds of appeal may be argued. The grant of permission of Judge Dineen appeared [3] to exclude part of the grounds of appeal whilst, at the same time [8], providing that “such other issues as the appellant may wish to proceed with may be argued”.
3. The First-tier Tribunal recorded the following background to the appellant’s appeal:

The appellant came to the UK on 22/01/2010 with entry clearance as a student valid until 28/02/2011. His leave has not been extended.

In April 2010 he entered into a relationship with a British citizen, his now wife Edith Majeed. The couple lived together from June 2010 and entered into an Islamic marriage in July 2011. They subsequently had a registry office ceremony in December 2011. The couple have lived together since June 2010 in a property that is owned by Mrs Majeed subject to a small mortgage. Mrs Majeed is in receipt of state pension and disability living allowance.

4. The judge recorded that the appellant is aged 30 years old whilst his wife is aged 66 years and has a number of “enduring and debilitating health problems sufficient for her to be entitled to disability living allowance at the high rate of both mobility and care components”. Whilst the substantial age difference between the appellant and his wife did not, in itself, indicate that the marriage was not genuine or subsisting, it was a fact that the judge was “bound to take into account”.
5. The judge found Mrs Majeed to be an honest witness who gave straightforward and cogent evidence. He took a different view of the appellant’s evidence. He noted that the appellant had learned of the suspension from the respondent’s register of the college where he claimed to be studying through a friend in April 2010. He had done nothing to regularise his immigration status until he made the application which is the subject of this appeal. The judge found [19] that the appellant’s failure to regularise his stay in the United Kingdom or to return to Pakistan undermined his credibility. The judge also heard from a friend of the appellant, Mr Rasool, whom the judge found to be “particularly unreliable” [20]. Mr Rasool had been unable to say whether the appellant had been studying or working in the United Kingdom despite claiming to be his friend of many years standing. The judge concluded that the appellant is maintaining his relationship with Mrs Majeed “as a device to maintain his pretence of marriage till such time as he has permanent leave to be in the UK. I am not satisfied that this is a genuine or subsisting relationship, at least so far as the appellant is concerned”. In the circumstances, he found

that the appellant could not succeed under the Rules and that “issues under Article 8 do not arise” [24].

6. The grounds at [6] simply take issue with the judge’s findings of fact. It is asserted in the grounds that there was “considerable evidence in support of the appellant’s case that he is in a relationship with his wife and it is genuine and subsisting ...”. The judge is accused of having failed to consider the evidence “in its totality, balancing against his overstaying and failure to regularise his stay immediately following his realisation his college had brought an end to his leave ...”
7. I find nothing wrong whatsoever with the judge’s assessment of credibility. He has acknowledged that Mrs Majeed was a truthful witness and believes that she is in a genuine relationship with the appellant. The judge was entitled to take into account the appellant’s failure to regularise his immigration status after his college studies ended. It was also clear that the evidence of the witness Mr Rasool had a negative impact on the judge’s assessment of the appellant’s credibility given that Mr Rasool had attended in order to support the appellant’s case.
8. The grounds go on to assert that the judge failed to deal with Article 8. That is not entirely true (see above) although I acknowledge that the judge’s handling of Article 8 is brusque. The appellant’s representative has submitted a skeleton argument in which it is stated that, should the Upper Tribunal uphold the First-tier Tribunal’s findings on credibility (which it does), then it should find that the First-tier Tribunal erred in law by failing to have proper regard to the family/private life rights of Mrs Majeed. The First-tier Tribunal has, in effect, found that Mrs Majeed has been deceived by the appellant and that her belief that she is in a genuine and subsisting relationship with the appellant is an illusion. In those circumstances, it is difficult to see how family life in the context of Article 8 may actually be found to exist. There was also no evidence at all before the First-tier Tribunal that Mrs Majeed requires the care of the appellant as a matter of necessity or is it likely, in the light of the outcome of these proceedings, that the appellant will continue to provide her with that care. I have no doubt that Mrs Majeed will be disappointed by the outcome of the appeal proceedings but it would, frankly, make no sense whatsoever for the Tribunal to allow the appeal of the appellant under Article 8 and permit him to remain in the United Kingdom when it has found that his claim to be in a relationship with Mrs Majeed was a device aimed cynically at achieving that very objective. Whilst I acknowledge that Judge Hindson might have dealt with Article 8 at rather greater length, I cannot see any reason to interfere with his decision that the appellant’s appeal should be dismissed both under the Immigration Rules and on human rights grounds.

DECISION

9. This appeal is dismissed.

Signed

Date 13 August 2014

Upper Tribunal Judge Clive Lane