



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/33926/2013

Heard at Birmingham
on 2nd May 2014

Determination Promulgated
on 1st July 2014

THE IMMIGRATION ACTS

Before

UPPER TRIBUNAL JUDGE HANSON

Between

RASHEED BHATTI
(Anonymity direction not made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Hussain of Syed Solicitors.

For the Respondent: Mr Smart – Senior Home Office Presenting Officer.

DETERMINATION AND REASONS

1. This is an appeal against a determination of First-tier Tribunal Judge V Osborne promulgated on the 4th February 2014 in which she dismissed the appeal against a direction dated 1st August 2013, made under section 10 Immigration and Asylum Act 1999, for the Appellants removal to Pakistan.
2. Permission to appeal was granted on the ground challenging the Judge's findings in relation to Article 8. The Judge accepted there was a genuine relationship between the Appellant and his partner but found the decision

proportionate. It was submitted this is a finding contradicted by other findings in the determination [para 13,25,26,27 and 30].

Error of law

3. Mr Bhatti's immigration history shows he entered the UK in 2003. His wife and their four children had entered in 2002. She claimed asylum with the children as dependants and were eventually granted IRL.
4. Mr Bhatti made no application on entry and in 2005 was encountered and detained as an illegal entrant. He then claimed asylum which was refused and became appeal rights exhausted in November 2005. Further submissions received from Mr Bhatti were refused in June 2006 after which he failed to honour reporting conditions. Mr Bhatti was encountered again by the police on 5th March 2008. He then applied for his case to be considered under the Legacy scheme. A decision was made by the Respondent on 1st August 2013, refusing his claim to be entitled to remain in the UK on the basis of his human rights, with a full right of appeal. It is this appeal which came before Judge Osborne.
5. The Judge carefully considered the relevant evidence and noted that Mr Bhatti met his current partner in January 2011 and that they married according to Islamic law on 7th March 2011. The evidence of both Mr Bhatti and his partner was that neither could live on their own. The Judge made a number of other relevant findings that can be summarised as follows:
 - i. The 'marriage' between Mr Bhatti and his current wife is based largely upon a mutual need for companionship and support [13].
 - ii. The most up to date medical report from the partners GP records that she suffers from a number of conditions.
 - iii. Mr Bhatti's partner's cash and carry business is being closed down as a result of her health issues [16].
 - iv. Mr Bhatti has close family members still living in Pakistan, contrary to his assertions [19].
 - v. There is some limited evidence Mr Bhatti and his partner live together at 128 Nab Lane, as claimed, although most of the documents containing this address are in Mr Bhatti's name [22].
 - vi. Little weight could be placed upon four documents from individuals purporting to know Mr Bhatti and his partner and to have attended the 'wedding' for the stated reasons [23].

- vii. The Judge was satisfied from photographs and other evidence that an Islamic marriage ceremony did take place very shortly after the couple met but this is not evidence they live together as claimed [24].
- viii. There is no evidence from neighbours or people who may meet the couple on a day-to day basis confirming they live together. A letter from a former landlord states they lived at a named address from March 2011 to May 2012 and evidence has been produced relating to a current tenancy. On balance it has been proved they live in the same property [25].
- ix. An analysis of the Article 8 claim under the Rules (Appendix FM and 276ADE) is not appropriate as the application was made long before the changes to the Rules came into effect. Article 8 needs to be assessed under Article 8 ECHR [26].
- x. It is accepted the couple are married under Islamic law. They cannot marry under English law as Mr Bhatti is still married and not yet divorced [26].
- xi. The parties live in the same property. The nature of the relationship is based upon their mutual need for companionship and the wife's need for assistance with her health conditions [27].
- xii. The wife suffers from serious and multiple conditions for which she is likely to need assistance in both the administration of medication, the keeping of appointments, mobility issues, and emotional support [28].
- xiii. Mr Bhatti has done various things in an attempt to ensure his continued residence in the UK. His claim to suffer medical conditions set out in his grounds of appeal is unsupported by any medical evidence and in his statement he says he is a person of sound health. Mr Bhatti attempted to mislead the Tribunal in claiming to have no family connection to Pakistan whereas one of his daughters clearly contradicted this in her evidence [29].
- xiv. The key question is whether the relationship between Mr Bhatti and his wife is a genuine marital relationship or one he has entered into for his own ends? [30].
- xv. The relationships between Mr Bhatti, his children, and grandchildren do not amount to family life recognised by Article 8. All his children are adults and they are the primary cares for the grandchildren. It had not been proved that the welfare of either group would be significantly disrupted by his absence. His wife is a British citizen

with access to the NHS. It is accepted it is not reasonable to expect her to relocate to Pakistan [31].

- xvi. On the balance of probabilities it has not been shown that the relationship between Mr Bhatti and his wife is such that it should be protected by confirmation that he has a right to family life with his wife in the UK [31].
- xvii. No family life recognised by Article 8 has been proved and so it is unnecessary to consider the proportionality issue [32].
- xviii. In relation to his private life; Mr Bhatti provided no detail of his private life and there is no independent evidence to confirm the nature of it. Any private life he has, has been developed at a time he had no leave to remain and it has not been established that Mr Bhatti has a private life within the meaning of Article 8 [34].

6. On behalf of Mr Bhatti it is argued that as the Judge did not find the marriage to be a sham marriage her findings are contradictory. It was accepted in paragraph 13 that the marriage was based upon a need for mutual support which conflicts with the finding in paragraph 31. It is said the Judges findings are irrational. Mr Smart challenges this and referred in his submissions to a 'Jack Spratt' type relationship.
7. The Judge did find the marriage to be based upon a mutual need in paragraph 13 and that there was evidence of living in the same household. The Judge does not find the parties live as man and wife in the same household just that they occupied the same property. The Judge later in the determination crystallises her thinking where she finds that Mr Bhatti's motives are not genuine. There is nothing inherently contradictory with such a finding when all the relevant evidence is considered together. There are a number of concerns noted by the Judge and Mr Bhatti was found to have lied to the Tribunal in relation to his own health needs and lack of ties to Pakistan. He was found not to be credible. The need for companionship and support, so far as Mr Bhatti is concerned, was found to be that to enable him to remain in the UK whereas for his wife it relates to her personal needs. It is not a marriage in the full sense in which such a relationship is ordinarily understood but only a mutual relationship. Whilst I accept that companionship marriages do exist, where the parties have entered the relationship in the full understanding that is all they want and expect this is not the claim made by Mr Bhatti. He claimed he has a valid and full marriage which was not substantiated by the evidence.
8. Mr Hussain was asked to address the Tribunal in relation to the outcome if it had been found that the marriage was as alleged. He submitted Mr Bhatti is able to succeed under the Rules for although he is unable to succeed under the 'partner route' of Appendix FM, as a result of an inability to satisfy the

suitability or financial requirements, he can succeed under EX.1. based upon the existence of insurmountable obstacles to his wife relocating.

9. I find there is legal error in the determination for at paragraph 26 the Judge stated the Respondent's assessment under the Rule is 'not appropriate' as the application was made before 9th July 2012. She then proceeded to determine the appeal under Article 8 ECHR as a result, although such error may not be material.
10. The application was made prior to the introduction of the current version of the Rules and additional information sought in December 2011 and April 2013. It is not suggested the application was made under a provision of the Rules that existed pre 9th July 2012. It is an application that relies upon a claim outside the Rules under Article 8 ECHR.
11. The decision is dated 1st August 2013 when the current version of the Rules was in force. Odelola v SSHD [2009] UKHL 25 is authority for the proposition that, absent specific provisions to the contrary, it is the Rules in force at the date of decision which are to be applied. The Rules in force on 1st August 2013 set out those elements of the pre-9th July 2012 Rules which remain relevant to applications made but not decided prior to the changes.
12. The Rules were amended in September and later in December 2013 to include a provision that the Respondent can apply the provisions of the post 9th July 2012 Rules to any case, even if a pre 9th July 2012 application, if she sees fit. In this case it has not been established that there are any relevant applicable transitional provisions as it has not been shown that an application was made under the previous provisions of the Rules that applies to Mr Bhatti's circumstances. The Rules in force at the date of decision are those applied by the Respondent to which reference could be made to inform her in relation to the proper interpretation of Article 8, in any event.
13. The submission the appeal could have succeeded under EX.1 on the basis of insurmountable obstacles has no arguable merit. In Sabir (Appendix FM - EX.1 not free standing) [2014] UKUT 63 (IAC) it was held that the architecture of the Rules as regards partners is such that EX.1 is "parasitic" on the relevant Rule within Appendix FM that otherwise grants leave to remain. If EX.1 was intended to be a free- standing element some mechanism of identification would have been used. The structure of the Rules as presently drafted requires it to be a component part of the leave granting Rule. This is now made plain by the respondent's guidance dated October 2013.
14. I accept in paragraph 10 that the inclusion of the word "not" is a typing error as clearly the claim is based upon Mr Bhatti's relationship with his second 'wife'.

15. The Judge accepted Mr Bhatti and his 'wife' had undertaken a ceremony and lived in the same house but not that this is a genuine marriage. The Rules allow Mr Bhatti to rely upon EX.1 if the eligibility but not suitability requirements can be met, but in this case they cannot. In Appendix FM, 'Definitions' GEN.1.2. it is stated that for the purposes of this Appendix "partner" means-
 - (i) the applicant's spouse;
 - (ii) the applicant's civil partner;
 - (iii) the applicant's fiancé(e) or proposed civil partner; or
 - (iv) a person who has been living together with the applicant in a relationship akin to a marriage or civil partnership for at least two years prior to the date of application, unless the context otherwise requires.

16. There was no application under Appendix FM but the Tribunal is required to apply the provisions as a result of 276A0 and Gen 1.9. As the formal requirements for there to be a partner have not been shown to have been met the application fails under this route. Also, in relation to suitability, Mr Smart submitted S-LTR 2.2 is relevant. S-LTR.2.1 states that an applicant will normally be refused on grounds of suitability if any of paragraphs S-LTR.2.2. to 2.4. apply. S-LTR.2.2. states that whether or not to the applicant's knowledge -
 - (a) false information, representations or documents have been submitted in relation to the application (including false information submitted to any person to obtain a document used in support of the application); or
 - (b) there has been a failure to disclose material facts in relation to the application.

17. In paragraph 29 of the determination the Judge found that Mr Bhatti had attempted to mislead the Tribunal and provided false information. This is a sustainable finding on the facts.

18. I reject Mr Hussain's submission that Mr Bhatti is able to meet the suitability requirements and cannot meet the eligibility solely as a result of the fact he has no valid leave. Such a submission is not supported by the evidence. The submissions that the breach of 2.2 is a minor discrepancy is an attempt to argue a 'near miss' but there is no such legal concept as confirmed by the Supreme Court in Patel. There has been an attempt to mislead the First-tier by the provision of information which has been proved to be false. Mr Bhatti did so deliberately and so is culpable. It is also clear from paragraph 29 that there was more than one attempt to mislead.

19. It is clear that had the Judge applied the provisions of the Rules as they stood at the date of decision, absent applicable transitional provisions to the contrary, Mr Bhatti will have failed under the Rules. Any failure to do so is therefore not material to the decision to dismiss the appeal.

20. Having considered the submissions made, the evidence available, and relevant legal principles, I find no legal error material to the decision to dismiss the appeal has been proved.

Decision

21. **There is no material error of law in the Immigration Judge’s decision. The determination shall stand.**

Anonymity.

22. The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005. I make no such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed.....
Judge of the Upper Tribunal

Dated the 30th June 2014