



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

Appeal Number: IA/49201/2013

THE IMMIGRATION ACTS

Heard at Manchester

On 30th July 2014

Determination

Promulgated

On 1 August 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE MCCLURE

Between

**MR ABDUL HAMEED
(NO ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: The appellant attended in person

For the Respondent: Ms Johnson, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant, Mr Abdul Hameed date of birth 19th August 1978, is a citizen of Pakistan.
2. I have considered whether any of the parties to the present proceedings requires the protection of an anonymity direction. Taking account all of

the circumstances I do not consider it necessary to make an anonymity direction.

3. This is an appeal by the appellant against the determination of First-tier Tribunal Judge Heynes promulgated on 6th May 2014. The judge dismissed the appeal of the appellant against the decisions of the respondent dated 12 November 2013 to refuse the appellant leave to remain in the United Kingdom as a spouse and to remove the appellant from the United Kingdom under section 47 of the 2006 Act.
4. The respondent has submitted a response to the grounds of appeal under rule 24. In that response the respondent has stated that she does not oppose the appellant's application for permission to appeal and invites the Tribunal to determine the appeal with a fresh oral hearing.
5. As set out above the appellant has been identified himself as Mr Abdul Hameed. Part of the evidence in the case before the First-tier Tribunal had allegedly identified "Zubair Mughal" as a name used by the appellant on at least one other occasions. The evidence, it was claimed, proved that the appellant had used the name Zubair Mughal in an application for a visit visa in 2006. That application had been refused. Thereafter the appellant in the name of Abdul Hameed had made application in 2007 for a visit visa, which ultimately had been successful.
6. Part of the evidence had shown that someone using the name Zubair Mughal had made another application for entry to the United Kingdom and had had an appeal, which had been dismissed. In reliance in part upon that evidence the judge had made findings of fact with regard to the credibility of the appellant overall. That clearly had coloured the approach of the judge to the whole fact-finding issue in respect of the appellant's current application to remain as a spouse.
7. By letter dated 23 April 2014 the respondent had been conceded that part of the evidence relating to Zubair Mughal related to a wholly different person. Whilst the application in 2006 was still alleged to be by the appellant, the application which had gone to appeal was accepted as not being the appellant. It was accepted that in making findings of fact the judge's approach may have been influenced by evidence, which was clearly wrong.
8. In the response to the grounds of appeal under rule 24 by the respondent it had been accepted that the appeal would have to be re-determined with a fresh oral (continuance) hearing. Before me the respondent's representative sought to resile from the concession that there needed to be a fresh hearing, in part seeking to withdraw from the concession made under the rule 24 response.
9. Given that the findings of fact made rely in part upon evidence which has now proved to be wrong, a fresh hearing is necessary.

10. At the hearing before me the appellant sought to produce further documents. The representative for the respondent also sought to produce further documents which indicated that the appellant at the time of making his original visa application in 2006 had been married and had a child in Pakistan. There was no evidence before the Tribunal that this first marriage in Pakistan had ever been terminated. The appellant claimed that he did have evidence that that marriage had been terminated but it was in Pakistan.
11. The appellant having entered on a visit visa in 2007 remained in the United Kingdom. Before August 2007 the appellant went through an Islamic ceremony of marriage with Shazia Khan. The appellant married Shazia Khan in 2009 describing himself as single for the civil marriage ceremony in the United Kingdom. That marriage had allegedly been terminated after an alleged incident of domestic violence or 2011 in March 2012. There was no evidence of the divorce certificate to terminate that marriage. In Spring 2012 the appellant met Shakina Khan. By July 2012 he had gone through an Islamic marriage ceremony and by November 2012 had married in a civil ceremony. It is on the basis of this latest relationship that the appellant was seeking to remain in the United Kingdom.
12. Given the new documentation submitted without evidence that his marriage in Pakistan had been lawfully terminated, it is arguable that the latest marriage is null and void. The appellant was not in a position to deal with the issue of whether and not that first marriage had been properly terminated.
13. The Rule 24 notice accepted that there was a clear error of law. In light of the nature of the error it is appropriate for this appeal to be heard of fresh. Given the new evidence submitted it is appropriate that fresh findings of fact are made on all issues. In the circumstances it is appropriate for the appeal to be remitted back to the first-tier for a full hearing in the first-tier.
14. In the circumstances there is a material error of law in the determination. I order that the appeal be remitted back to the first-tier to be heard a fresh by judge other than Judge Heynes.

Signed

Date

Deputy Upper Tribunal Judge McClure