



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: OA/04787/2013

THE IMMIGRATION ACTS

Heard at Field House
On 17 January 2014
Prepared on 8 February 2014

Determination Promulgated
On 26 February 2014
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Before

UPPER TRIBUNAL JUDGE CRAIG

Between

MR ROHIT GUPTA

Appellant

and

ENTRY CLEARANCE OFFICER - NEDE

Respondent

Representation:

For the Appellant: Mr Q Anisuddin, Legal Representative of S.Z. Solicitors
For the Respondent: Mr S Whitwell, Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant, who was born on 1 May 1983, is a citizen of India. He applied for entry clearance with a view to settlement as a partner under Appendix FM of the Immigration Rules, but his application was refused by the respondent on 10 January

2013. The refusal letter is dated the same date. The appellant was not satisfied, for reasons set out in the refusal letter, that the appellant was in a genuine subsisting relationship with Ms Webb, despite acknowledging the submission of a marriage certificate and photographs. In particular it was noted in the refusal letter that the appellant had had previous entry clearance as the dependent partner of his former wife and that he had not informed the immigration authorities in this country of any change of circumstances, which was not consistent with his claim now that prior to his divorce from his former wife he had resided with Ms Webb.

2. The application was also refused on the grounds that the appellant did not satisfy the financial requirements under the Rules, and nor did he satisfy the English language requirement.
3. The appellant appealed against this decision and his appeal was heard before First-tier Tribunal Judge Whiting sitting at Columbus House, Newport on 1 October 2013.
4. In a determination promulgated on 8 October 2013, Judge Whiting dismissed the appellant's appeal, both under the Immigration Rules, and also under Article 8.
5. The appellant appealed against this decision and was granted leave by First-tier Tribunal Judge Frances on 27 November 2013.

The Hearing

6. I heard submissions on behalf of both parties, which are set out in my Record of Proceedings, in which I attempted to record everything which was said to me. Accordingly, I shall not set out below everything which was said to me during the course of the hearing, but shall refer only to such of the submissions as is necessary for the purposes of this determination. However, I have had regard to everything which was said during the course of the hearing, as well as to all the documents contained within the files, whether or not the same is referred to specifically below.
7. On behalf of the respondent, Mr Whitwell confirmed that it was not the respondent's case now that the marriage between the appellant and the sponsor was not a genuine marriage. The respondent did not challenge the First-tier Tribunal's finding that it was. However, the financial requirements under the Rules had not been satisfied, and nor had the English language requirement. So far as Article 8 was concerned, given that the sponsor was a single lady with two adult children in the UK, there was nothing unduly harsh in requiring her to relocate to India (in circumstances where the requirements under the Rules were not satisfied) and there was no error of law in the First-tier Tribunal so finding.
8. In the course of argument, on behalf of the appellant, Mr Anisuddin eventually accepted that based on the evidence which had been put before the First-tier Tribunal, the judge's finding that the English language requirement had not been satisfied could not properly be challenged.

9. With regard to the financial requirements, it was asserted that the sponsor had a second employment, from which she received over £3,000 per year.
10. So far as Article 8 was concerned, before concluding that the sponsor could re-locate to India, the judge should have taken into account that she did not speak the language or like the food.

Discussion

11. Even on the appellant's own case, it is clear that his appeal could not have succeeded under the Rules, as the English language requirement was not satisfied. Further, in my judgment, the judge's finding that the appellant had not established on the balance of probabilities that the sponsor had the supplementary income as claimed was open to him and is adequately reasoned (from paragraphs 18 onwards).
12. The judge asked himself the right questions with regard to Article 8, and his finding that the decision was proportionate in all the circumstances is again adequately reasoned and was open to him.
13. If the appellant is able to provide satisfactory evidence that both the financial requirements and the English language requirement have been satisfied, there is no reason why he should not make another application. However, satisfactory evidence with regard to these requirements had not been placed before the First-tier Tribunal, and the judge was entitled to reject the appeal under Article 8 also, and made no error in so doing.
14. It follows that this appeal must be dismissed, and I will so find.

Decision

The appellant's appeal is dismissed, on all grounds.

Signed:

Dated: 24 February 2014

Upper Tribunal Judge Craig