IAC-AH-KRL-V1

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/09568/2014

THE IMMIGRATION ACTS

Heard at Centre City Tower, Birmingham	**Decision & Reasons Promulgated**
On 24th July 2015	**On 11th August 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

MR AMANPREET SINGH
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: No appearance
For the Respondent: Mr D Mills (HOPO)

DETERMINATION AND REASONS

1. This is an appeal against the determination of First-tier Tribunal Judge Page promulgated on 2nd June 2014, following a hearing at Columbus House, Newport, on 16th May 2014 (on the papers). In the determination, the judge dismissed the appeal of Mr Amanpreet Singh, the Appellant, who subsequently applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

The Appellant

2. The Appellant is a male, a citizen of India, who was born on 8th September 1986. He appealed against the decision of the Respondent to refuse his application for indefinite leave to remain as the spouse of a person present and settled in the United Kingdom, namely, of Mrs Simone Selena Jordan, following his application of 23rd January 2013, and the Respondent's refusal decision dated 29th January 2014.

The Appellant's Claim

3. The Appellant's claim is based upon his marriage with Mrs Simone Selena Jordan. He was invited for interview with his wife on 25th November 2013. He confirmed he would attend. There was, however, no attendance, but the Appellant sent a note dated 17th December 2013 to the Respondent stating that his general practitioner had referred to his "severe backache". Another interview was then set up, whereby both the Appellant and his wife were re-invited to attend on 24th January 2014. Again, the Appellant did not attend, but after the interview, on 27th January 2014, his representative contacted the Respondent to say that his wife and he had been unable to attend as their car had broken down on the way to the interview. At the hearing itself, the Appellant asked for a "paper hearing" on 16th May 2014. Naturally, he did not attend that interview because of such a request. At the hearing before me today on 24th July 2015, the Appellant is once again not in attendance. Neither is any explanation given for this non-attendance. Nor, is any legal representative present on his behalf. There can be no more serious and urgent a matter for a person without legal status in the UK than to attend his appeal hearing in order to regularise his or her stay. To fail to do so, and particularly without an explanation, speaks for itself.

The Judge's Findings

4. The judge referred to the matters above. The judge also stated, "that … he wanted the appeal to be decided on the papers without a hearing. I find this surprising as the hearing would have been an opportunity for the Appellant and his wife to attend to give evidence about their relationship …" (paragraph 4). The judge then made two observations. First, that the failure to attend the first interview was "unsupported by any medical evidence to be expected if the Appellant was suffering from incapacity" (paragraph 9). In particular, simple reference to a back complaint was insufficient because what was required was, "medical evidence to record that the Appellant had a back complaint to *prevent* attendance, explaining what exactly was wrong with his back" (paragraph 10). This was missing. The judge concluded that, "the description of backache does not assist much. People with back problems cope with daily living" (paragraph 10). With respect to the car having broken down, for which an explanation was given some seven days after the interview date on the second occasion on 24th January 2014, the judge observed that, "there is just a bare assertion that the car broke down when they were on their way to interview" (paragraph 11). Given that the evidential burden rested upon the Appellant and his wife to provide proper evidence, the judge concluded that, "I can only draw the conclusion that the Appellant and his wife did not want to attend these two

interviews for whatever reason, and these two unimpressive excuses have been put forward" (paragraph 12). That being so, the judge applied paragraph 322(10) of HC 395 and upheld the refusal by the Respondent authority.

5. With respect to Article 8, the judge had regard to the case of **Gulshan [2013] UKUT 640**. The judge concluded that, neither the Appellant nor his wife availed themselves of the "opportunity to demonstrate to the Respondent that they met the requirements of the Immigration Rules and I can find no compelling circumstances not sufficiently recognised under the Immigration Rules" to necessitate regard being given to freestanding Article 8 jurisprudence, so that the appeal was refused (see paragraph 14).

Grounds of Application

6. The grounds of application state that the judge erred in not considering the papers submitted with the appeal.

7. On 18th August 2014, permission to appeal was granted specifically on the basis that it was arguable that the judge should have considered the papers submitted with the appeal since there is no indication in the determination that the judge recognised that refusal under 322(10) was discretionary.

Submissions

8. At the hearing before me on 24th July 2015, the Appellant was not in attendance and no submissions were made before me by anyone on his behalf. The Respondent was represented by Mr D Mills, a Senior Home Office Presenting Officer, and he submitted that the failure of the Appellant and his wife to repeatedly not attend and give an account of their relationship spoke for itself. He submitted that the judge below had himself observed (at paragraph 4) that it was rather surprising for the Appellant not to have asked for an oral hearing before the Tribunal given that this was an opportunity for both he and his wife to demonstrate the genuineness and validity of their marriage. Today, however, they had failed to attend yet again. This time there was no explanation whatsoever at all.

No Error of Law

9. I am satisfied that the making of the decision by the judge did not involve the making of an error on a point of law (see Section 12(1) of TCEA 2007) such that I should set aside the decision and remake the decision. In the determination, the judge refers to the fact that "the Grounds of Appeal have been served with a voluminous bundle of documents" (see paragraph 6). He refers to the witness statement dated 3rd April 2014 provided for the Appellant and his wife. It is not the case that "the voluminous evidence" has been neglected by the judge. Quite the contrary is the case. What the judge states is that,

> "The fact that there is no proper evidence to explain why there was no attendance on these two occasions – yet voluminous evidence to show that the Appellant and his partner have been living at the same address – I am unable to make any finding under

> paragraph 322(10) in favour of the Appellant. The burden of proof is upon the Respondent … but there is an evidential burden upon the Appellant …" (paragraph 12).

10. That finding was entirely open to the judge. Indeed, the fact that the Appellant and his wife have yet again failed to attend and to provide an explanation is indicative of the "unimpressive excuses" that have been put forward, as the judge below explained (see paragraph 12).

11. It is not enough to provide documentary evidence about the parties living at the same address. They have to show that they are engaged in a genuine and subsisting marriage which comes up to proper proof. This is done through a process of making themselves available for questioning.

12. The fact that they have both refused to entertain that possibility indicates that the judge's decision below was entirely proper and within his power to make.

Decision

13. There is no material error of law in the original judge's decision. The determination shall stand.

14. No anonymity order is made.

Signed — Dated

Deputy Upper Tribunal Judge Juss — 3rd August 2015