



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/27156/2014

THE IMMIGRATION ACTS

Heard at Field House
On 8 July 2015

Decision and Reasons Promulgated
On 24 August 2015

Before

UPPER TRIBUNAL JUDGE CONWAY
DEPUTY UPPER TRIBUNAL JUDGE SYMES

Between

MUHAMMAD JADOON
(ANONYMITY ORDER NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms A Watterson (Irving and Co Solicitors)

For the Respondent: Mr E Tufan (Senior Home Office Presenting Officer)

DECISION AND REASONS

1. This is the appeal of Muhammad Jadoon, a citizen of Pakistan born 13 August 1998, against the decision of 12 June 2014 by the Respondent to refuse to grant him an extension of his discretionary leave to remain.
2. The underlying relationship with Jane Marcia Higgs, a British citizen, whom the Appellant had married on 29 July 2010, had previously been accepted as

genuine and founded the grant of discretionary leave to remain to the Appellant. The application to extend leave to remain was refused because the Respondent was no longer satisfied that the relationship was a genuine and subsisting one, as the Appellant and his partner had been interviewed on 29 April 2014 and in the view of the decision maker there were material discrepancies in their answers to certain questions. The *Interview Summary Sheet* provided by the Respondent, upon which the refusal letter was based, identified the following inconsistencies:

- (a) As to the date of the proposal, New Years Eve 2008 (him) or 2009 (her);
 - (b) The wedding date: 27/28 July (her) or 29 July (him);
 - (c) Neither recalled the full names of their witnesses, a married couple;
 - (d) As to his studies; she said he was studying law when she first met him and that he went to college in London for three days a week, whereas he said that he studied law in Pakistan and then business in London, and that he travelled to London five days a week;
 - (e) She referenced joint savings of £4,000 whereas he put this at £5,000, and added that she held £10,000 in a Nationwide account;
 - (f) She said that they were saving for a mortgage, whereas he said they were saving for a mortgage and a wedding reception;
 - (g) She said he has a Samsung mobile phone whereas he produced an old Nokia phone at the hearing, which he said he had been using pending the repair of the Samsung; they differed as to the timing of her purchase of an i-Phone.
3. The Appellant brought an appeal against that decision, and Judge Kempton determining it in the First-tier Tribunal upheld the Respondent's position, because of a lack of post-decision evidence as to cohabitation, particularly focussing on a lack of evidence of Council Tax or rental agreement payments in their joint names, and a lack of wedding photographs or supporting witnesses. She noted that there were few discrepancies in the interview records but thought this might be due to the Appellant and Ms Higgs having known each other for a long time. These considerations led her to conclude that though the marriage might have been genuine at the time it was contracted, the parties to it had not shown they had remained in a subsisting relationship. She therefore found that they did not qualify under the Appendix FM route as partners in a genuine and subsisting relationship.
4. An application for permission to appeal was supported by grounds which argued that the Judge had been wrong to consider the case under the framework of Appendix FM given that this was a case where DLR had been granted before 9 July 2012, and that the Judge had been wrong to conclude that the discrepancies identified by the Respondent in the refusal letter had been "explained away in oral evidence" without treating that as counting in favour of the Appellant's credibility, and additionally contending that she had wrongly

overlooked the presence of bank statements showing cohabitation and a tenancy agreement that showed that Council Tax was included as part of their rent.

5. Permission to appeal was granted by Judge Kekic on 7 April 2015 and following a hearing to establish the question of error of law, Judge Conway found that the decision of the First-tier Tribunal had to be set aside because the grounds of appeal were made out: there had indeed been inadequate recognition of the many inconsistencies and details within the interview record and material documents had been overlooked, such as the tenancy agreement which bore out the contention that it was wrong to expect them to produce Council Tax records given that this was not a matter for which they were liable.
6. The matter was then adjourned and the appeal came on for re-hearing before the Upper Tribunal, now constituted as a Panel, Judge Conway being joined by Judge Symes, on 8 July 2015.
7. Further evidence was submitted by way of a Council Tax summary for the Appellant and Ms Higgs at 12 [-] Grove for 1 June 2015, confirmation of Ms Higgs appearing on the electoral role at that address in May 2015, various copies of cards sent between the two commemorating special occasions including Valentine's Day, a letter from their landlord Islam Uddin confirming he was responsible for all bills, joint bank account statements for Appellant and Sponsor at the 12 [-] Grove address, their individual driving licences which each gave the same address.
8. In his witness statement the Appellant set out that he and his wife remained very much in love and he did not feel it would be safe for her to live with him in Pakistan as a fair haired westerner.
9. The Appellant gave evidence, saying that their rent was inclusive of all bills, and pointing out a chain of documents which identified his landlord and their participation in a tenancy agreement which meant they were not liable for Council Tax. His wife adopted his witness statement. Neither was challenged as to the genuine nature of the relationship.
10. For the Respondent it was submitted that it was unusual for Council Tax to be included as part of the rent payable under a Tenancy Agreement; that observation aside, Mr Tufan was content to rely on the original refusal letter.
11. For the Appellant it was submitted that the only question relevant to the appeal was the credibility of the relationship, as if that was established the sole issue which divided the parties fell away and there was no barrier to the grant of further Discretionary Leave to Remain. There were bills provided in the landlord's name and ample evidence of cohabitation, and the interview record included a litany of vivid answers that had the ring of truth.

Findings and Reasons

12. We have had the advantage of hearing oral evidence in this case to supplement the written materials. There were lengthy interviews in this case, the Sponsor being asked 442 questions and the Appellant being asked 277 questions. The British citizen sponsor has consistently supported the appeal by attending hearings to answer questions. Whilst there were several matters which caused the Respondent concern, there were a great many other matters on which the evidence was both detailed and consistent. On balance we think that Mr Tufan was correct to strike a pragmatic stance on the appeal and to limit his case to reliance on the refusal letter without seriously challenging the account by cross examination, and we accept that the relationship is genuine and subsisting, because:
- (a) The matters said to be material discrepancies arising from the interview are in truth very minor in nature: the Sponsor gave a date for their wedding in 2010 that was merely one day out, and generally the matters said to involve discrepancies between their accounts were not put to either interviewee;
 - (b) There is sometimes confusion as to the precise question that was put, for example the interviewer asked them to identify individuals in a wedding photograph rather than actually asking them to name the witnesses to the marriage, contrary to the impression given in the refusal letter;
 - (c) Some of the questioning was unclear, for example as to whether a question involved access to savings in their joint account or their individual accounts, meaning that the Appellant appeared to reference individual savings whereas the Sponsor referred to joint ones;
 - (d) We do not think it would be safe to evaluate the genuineness of a relationship based on the brand of mobile telephone that one believed the other to be presently using;
 - (e) There are numerous documents now before the Upper Tribunal which show that the parties are cohabiting, and the concern entertained by the First-tier Tribunal as to whether or not their tenancy arrangements included responsibility for Council Tax is now answered by documentary evidence.
13. So we accept that the relationship is established on a balance of probabilities. Given the pragmatic and helpful agreement between the advocates before us that this was the sole issue that divided them, we need to say very little more.
14. The Respondent's guidance relating to cases of this nature sets out:

"Transitional Arrangements

All decisions made on Discretionary Leave on or after 9 July 2012 will be subject to the criteria set out in this guidance....

Applicants granted Discretionary Leave before 9 July 2012

Those who, before 9 July 2012, have been granted leave under the DL policy in force at the time will normally continue to be dealt with under that policy through to settlement if they qualify for it (normally after accruing 6 years continuous DL). Further leave applications from those granted up to 3 years DL before 9 July 2012 are subject to an active review.

Consideration of all further leave applications will be subject to a criminality check and the application of the criminality thresholds, including in respect of cases awaiting a decision on a further period of DL on that date. See Criminality and Exclusion section above.

Decision makers must consider whether the circumstances prevailing at the time of the original grant of leave continue at the date of the decision. If the circumstances remain the same and the criminality thresholds do not apply, a further period of 3 years DL should normally be granted. Decision makers must consider whether there are any circumstances that may warrant departure from the standard period of leave. See section 4.4 above."

15. The Appellant, being a person who was previously granted leave to remain under this policy, has clearly had his case for an extension of leave pursuant to its terms assessed on the wrong factual basis. Properly assessed, given our acceptance of the sole issue that troubled the Respondent, this is a case that fell within the terms of the published policy: "the circumstances remain[ed] the same [and] a further period of 3 years DL should normally be granted." We accordingly find that the decision was not in accordance with the law, the genuine nature of the relationship having been wrongly rejected, and that the Appellant's application remains outstanding before the Respondent for lawful determination of the extension of leave application.

Decision:

The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law which led to its decision being set aside.

We re-make the decision in the appeal by allowing the appeal. We do not make any fee award as our decision is based significantly on post-decision evidence.

Signed:

Date:

Deputy Upper Tribunal Judge Symes