



IAC-AH-DP-V1

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

Appeal Number: OA/11055/2014

THE IMMIGRATION ACTS

**Heard at Bradford
On 12th November 2015**

**Decision & Reasons Promulgated
On 26th November 2015**

Before

UPPER TRIBUNAL JUDGE HEMINGWAY

Between

ENTRY CLEARANCE OFFICER

Appellant

and

**MR MUHAMMAD LIAQAT
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: Mr M Diwnycz
For the Respondent: Mr N Vaughan

DECISION AND REASONS

1. The Appellant before the Upper Tribunal is the Entry Clearance Officer. The Respondent before the Upper Tribunal is Mr Muhammad Liaqat. I shall simply refer to him, throughout this determination, as the Claimant. This is the Entry Clearance Officer's appeal to the Upper Tribunal in respect of a decision of the First-tier Tribunal (Judge Cox) promulgated on 23rd June 2015 allowing the Claimant's appeal against a decision of 15th July 2014 refusing to grant him entry clearance to come to the UK with a view to settlement.

2. There was something of a history to be taken into consideration. The Claimant is a Pakistani national and was born on 20th November 1976. His application was to enable him to come to the UK to join his wife Shazia Kausar, a British citizen and his Sponsor, in the UK. The Claimant had previously been married to a national of Pakistan. It appears that that marriage took place in 2000. At a point in 2007, by which time he says the marriage was dissolved, he decided he wished to come to the UK, ostensibly, as a visitor. He made the appropriate application which was initially reviewed but, after an oral hearing, the First-tier Tribunal (Judge Hindson) allowed his appeal in a determination promulgated on 18th June 2008. The Claimant arrived in the UK in December of 2008 and stayed with his brother and sister-in-law. Shortly after that he met the Sponsor. The two developed a romantic relationship and, after his period of leave to enter as a visitor had expired, the Appellant overstayed. The relationship continued. On 5th January 2012, however, an Immigration Enforcement Unit visited the Claimant's brother's home in Huddersfield and, after seemingly making an attempt to evade the participating Immigration Officers, the Claimant was arrested. He then claimed asylum contending that he was at risk as a result of a land dispute. However, he did not pursue that application, indeed, in January 2012, having withdrawn his asylum claim, he voluntarily returned to Pakistan. His relationship with the Sponsor, however, continued and on 24th May 2013 she, having also been previously married, obtained a decree absolute of divorce. In September 2013 she and her family travelled to Pakistan and, on 26th September 2013, the two married in that country. They remained together until 20th October 2013 when she returned to the UK. The Sponsor has subsequently visited the Claimant on two further occasions.
3. The Claimant's application for entry clearance, on the basis of his relationship, was made on 19th December 2013. The Entry Clearance Officer was satisfied that the requirements of the relevant substantive Immigration Rule were met. However, the refusal was based on the discretionary refusal ground contained within paragraph 320(11) of the Immigration Rules.
4. When the appeal came before Judge Cox, the Presenting Officer contended, with reference to paragraph 320(11) that the Claimant had inaccurately portrayed his marital status on his entry clearance application form, that he had practised deception on entry to the UK, that he had attempted to frustrate his arrest/detention and had submitted a frivolous application for asylum. As to those matters, Judge Cox accepted that the Claimant had not been truthful about the circumstances of his earlier marriage by, at the very least, failing to mention it in his application form. However, the Judge did not conclude that the Claimant was still married noting that the evidence suggested that his first marriage had been of only short duration (paragraph 28 of the determination). The Judge accepted, with respect to the raid on the brother's house, that the Appellant had attempted to frustrate his arrest (paragraph 31). The Judge accepted that the application for asylum was unmeritorious (paragraph 33) and that all of those matters amounted to aggravating factors for the

purposes of the paragraph 320(11) assessment. Having done all of that the Judge went on to consider what were the positive factors weighing in favour of the Claimant. In this context he accepted, indeed it was not disputed, that the Claimant and Sponsor have “a genuine and subsisting relationship” (paragraph 35), that the continued separation was having an adverse effect upon the Sponsor (paragraph 36), that although the Claimant had made an unmeritorious asylum claim he had withdrawn it shortly afterwards and had not actively pursued the claim by attending a substantive asylum interview (paragraph 37) and that he had voluntarily returned to Pakistan within a few weeks of his arrest which was a matter the Judge thought he should receive significant credit for (paragraph 38). He then came down in favour of the Claimant, albeit, noting that the issues were finally balanced.

5. The grounds of application for permission to appeal contend, in effect, that the Claimant’s credibility was seriously undermined, that he had overstayed, that he had given false or incomplete information pursuant to his application, that the asylum claim represented a “blatant attempt to remain in the UK” and that there had not been a “suitable balancing exercise” undertaken by the Judge
6. Those grounds, in truth, represent disagreement with the Judge’s findings and conclusions but no more than that. As will be apparent from what I have said above, the Judge did, indeed, conduct a balancing exercise. He did recognise that the Claimant’s credibility was compromised and he unflinchingly acknowledged that. Nevertheless, he concluded that there were other matters which pointed to a favourable outcome. The Judge was entitled to reach the view he did on the material before him. Indeed, when matters came before me, permission having been granted by a Judge of the First-tier Tribunal, Mr Diwnycz did not strenuously seek to persuade me otherwise.
7. In all the above circumstances I conclude that the First-tier Tribunal did not make an error of law and that its decision shall stand.

Conclusions

The decision of the First-tier Tribunal did not involve an error of law and its decision shall stand.

No anonymity order is made.

Signed

Date

Upper Tribunal Judge Hemingway

TO THE RESPONDENT **FEE AWARD**

I make no fee award.

Signed

Date

Upper Tribunal Judge Hemingway