Upper Tier Tribunal
(Immigration and Asylum Chamber) Appeal Number: OA/16051/2013

THE IMMIGRATION ACTS

Heard at Field House	**Determination Promulgated**
On 11 December 2014	**On 6 January 2015**

Before

Deputy Upper Tribunal Judge Pickup

Between

Balwinder Kaur
[No anonymity direction made]

Appellant

and

The Entry Clearance Officer New Dehli

Respondent

Representation:

For the appellant: Ms A Watterson, instructed by Mondair Solicitors
For the respondent: Mr C Avery, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant, Balwinder Kaur, date of birth 24.10.74, is a citizen of India.

2. This is her appeal against the determination of First-tier Tribunal Judge Cox promulgated on 9.9.14, dismissing his appeal against the decision of the respondent, dated 4.7.13, to refuse entry clearance to the United Kingdom as a partner pursuant to Appendix FM of the Immigration Rules. The Judge heard the appeal on 20.8.14.

3. First-tier Tribunal Judge Pullig granted permission to appeal on 14.11.13.

4. Thus the matter came before me on 11.12.14 as an appeal in the Upper Tribunal.

Error of Law

5. In the first instance I have to determine whether or not there was an error of law in the making of the decision of the First-tier Tribunal such that the determination of Judge Cox should be set aside.

6. The application was made on the basis of the appellant's marriage to Mr Jasvir Singh on 11.3.10. Mr Singh is an Indian national with indefinite leave to remain in the UK.

7. The application was refused by the Entry Clearance Officer because it was not accepted that the appellant and the sponsor were in a genuine and subsisting relationship, or that they intended to live together permanently in the UK. Specifically, the Entry Clearance Officer did not accept that the marriage was valid, as the name of the husband as shown on the certificate was incorrect. The certificate was in the name Jasbir Singh. However, he renounced this name in 2004, some 6 years before the marriage. His residence permit states his name to be Jasvir Singh Sahota. In interview prior to decision the appellant confirmed this as her husband's name and stated that he had never been known by any other name.

8. From §17 of the decision of the First-tier Tribunal Judge Cox addressed the issue of validity of marriage. Judge Cox found that as a result of the statutory declaration of 26.1.04 the sponsor "absolutely and entirely renounced relinquished and abandoned the use of his former name of Jasvir Singh. Thus Judge Cox found that the sponsor was required from that date forward to use the name Jasvir Singh Sahota. However, the certificate showed Jasbir Singh. Judge Cox noted that there was no evidence before her that a marriage can be valid if the certificate records the name of the bridgroom incorrectly. There was thus insufficient evidence that the marriage was valid.

9. Judge Cox went on, nevertheless, from §24 to consider the evidence of the nature of the relationship between the appellant and the sponsor and concluded at §42 that there was no satisfactory evidence that the appellant is in a genuine and subsisting relationship with the sponsor. The judge found that the Rules were not met and that the decision did not infringe article 8 ECHR.

10. In essence the grounds of application for permission to appeal refer to §19 of the decision, where the judge deals with the question of validity of marriage in the light of the change of the appellant's name. It is submitted that the judge applied too high a standard of proof and ignored the evidence submitted by the appellant as to the validity of the marriage. A second ground asserts that the judge overlooked evidence demonstrating a genuine relationship.

11. In granting permission to appeal, Judge Pullig found merit in the grounds as a whole. "I find that the judge's decision contains an arguable error of law and I grant permission."

12. For the reasons set out herein, I find that the decision of Judge Cox did not disclose any material error of law and does not require to be set aside. In particular, I find that

the appellant has failed to adequately address the issue of validity of marriage, raised both in the refusal decision and in the decision of the First-tier Tribunal.

13. Ms Watterson accepted that the burden was on the appellant to demonstrate that she meets the requirements of the Rules and in particular, that marriage was valid, the issue having been raised by the Entry Clearance Officer. Ms Watterson relied on the detailed explanation in the sponsor's witness statement of August 2014 and the statement of solicitor Boota Singh Mondair, dated 12.8.14.

14. At §22 of his witness statement, Mr Singh explained that he has been unconsciously using different variations of his name and said that Jasvir and Jabir are often interchanged and that Singh is a standard surname given to all Sikh males and the actual surname (Sahota) is commonly dropped or added. Mr Mondair's statement is to similar effect, that the variations in v and b and the use of Singh is commonplace.

15. However, none of this evidence addressed the issue raised by the Entry Clearance Officer and addressed by the First-tier Tribunal Judge. The judge accepted that the appellant and the sponsor were the persons married, as their photograph is shown on the certificate. That was not the issue. The issue is whether the marriage can be valid when an incorrect name is recorded for one of the parties. On the face of the record, the marriage certificate, the name of the bridegroom is incorrect. Judge Cox pointed out that the appellant had not addressed this by adduce satisfactory evidence that the marriage would still be regarded as valid notwithstanding the formal error of name. As the judge pointed out at §20, bare assertions by the appellant's representative as to the law in India is insufficient to resolve the issue. The judge noted the significant period of time there had been since the refusal decision for the appellant to address this issue. There must be an answer in law, but the appellant failed to adduce evidence to resolve the issue one way or another. It is all the more surprising that even now, the appellant had not adduced any admissible evidence to resolve the issue in law as to whether a defect in formality such as an incorrect name recorded for one of the parties to a marriage in India has any legal effect on the validity of the marriage. It did not seem to me that Ms Watterson appreciated the point at issue, as most of her submissions were addressed to proving that the marriage was genuine and subsisting.

16. Section 85A of the 2002 restricts the Tribunal to considering only the circumstances appertaining at the date of decision. However, I accept, to the limited extent it can assist the appellant, that post-decision telephone evidence is potentially relevant to the nature of the relationship between the appellant and the sponsor as at the date of decision. To that extent there is a minor error at §37 of the First-tier Tribunal decision and I also accept the argument that on a reading of the telephone evidence the apparent contact is more frequent than the judge appears to have accepted. However, when read with §38, it is clear that even if the frequency of calls is accepted, it does not demonstrate that contact was between the appellant and the sponsor; calls can be made for many purposes and to others on that number. Thus, taken at its highest, the telephone evidence can carry little weight in support of the appellant's case.

17. Considering the evidence as a whole, including that of the interview at §27 onwards, I am satisfied that the outcome of the appeal would have been the same, regardless of the judge's treatment of the telephone evidence. After reviewing the answers given in the marriage interview, the judge reached the conclusion at §34 that the interview demonstrated a rehearsed account prepared for the purpose of establishing a relationship but was not evidence of the claimed relationship. At §35 the judge also found that the appellant's interview was not consistent with a person in a genuine and subsisting relationship with the sponsor. It is somewhat surprising that there was no witness statement from the appellant. Cogent reasons have been given for reaching that conclusion, on an assessment of the interview record as a whole. In the circumstances, I find that the judge's conclusion as to the nature of the relationship was one to which she was entitled to come and for which adequate reasoning has been provided. There is no material error of law in this respect.

18. In the light of those findings of fact, it is inconceivable that the claim could succeed outside the Immigration Rules on the basis of private and/or family life under article 8 ECHR. There was insufficient evidence that there was a valid marriage and the judge was not satisfied that the appellant had discharged the burden on her to demonstrate that this was a genuine and subsisting relationship. Any family life in such circumstances does not engage the protection of article 8 ECHR.

19. It follows that the dismissal of the appeal on immigration and human rights grounds was entirely justified.

Conclusion & Decision:

20. For the reasons set out above, I find that the making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law such that the decision should be set aside.

I do not set aside the decision.

The decision of the First-tier Tribunal stands and the appeal remains dismissed.

Signed: Date: 31 December 2014

Deputy Upper Tribunal Judge Pickup

Anonymity

I have considered whether any parties require the protection of any anonymity direction. No submissions were made on the issue. The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

Given the circumstances, I make no anonymity order.

Fee Award **Note: this is not part of the determination.**

In the light of my decision, I have considered whether to make a fee award (rule 23A (costs) of the Asylum and Immigration Tribunal (Procedure) Rules 2005 and section 12(4)(a) of the Tribunals, Courts and Enforcement Act 2007).

I have had regard to the Joint Presidential Guidance Note: Fee Awards in Immigration Appeals (December 2011).

I make no fee award.

Reasons: the appeal has been dismissed and thus there can be no fee award.

Signed: Date: 31.12.14

Deputy Upper Tribunal Judge Pickup