



UPPER TRIBUNAL
(IMMIGRATION AND ASYLUM CHAMBER)

APPEAL NUMBER: IA/34526/2014

THE IMMIGRATION ACTS

Heard at: Field House
on 21 March 2016

Decision and Reasons Promulgated
on 11 April 2016

Before

Deputy Upper Tribunal Judge Mailer

Between

MR SURJIT SINGH
NO ANONYMITY DIRECTION MADE

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation

For the Appellant: Mr F Bajwa, Bajwa and Co Solicitors

For the Respondent: Mr P Duffy, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a national of India, born on 19 November 1987. He appeals with permission against the decision of First-tier Tribunal Judge Wyman promulgated on 16 September 2015, dismissing his appeal against the decision of the respondent refusing his application for a residence card under the Immigration (EEA) Regulations 2006 (“the 2006 Regulations”).
2. It was not disputed that the appellant's sponsor was exercising Treaty rights in the UK. The Judge accepted, as demonstrated by the documents they submitted, that the couple are married and have been living together at the same address.

However, she stated at [52] that living together is not the same thing as being in a genuine, subsisting relationship.

3. She noted that directions had been issued in March 2015 for the respondent to serve on the appellant a transcript of the interview held on 8 August 2014, but this has never been provided. It was asserted that the recording equipment was faulty and that the transcripts were not available [64].
4. The Judge based her findings primarily on the questions that were asked at the appeal hearing itself and, to a limited extent, on the questions asked in March 2014. A hand written note of the interviews that took place on the date of marriage had been produced.
5. The Judge accepted that the sponsor “believes in this marriage” [72]. She attended the detention centre every day “which is a proof of affection.” However, she did not believe that the appellant held the same views about their marriage; he had entered into this relationship in an attempt to remain in the UK [72]. She accordingly dismissed the appeal.
6. On 9 February 2016, First-tier Tribunal Judge Page granted the appellant permission to appeal. He stated that it was not clear why the Judge was not satisfied that the appellant was in a genuine marriage but that his wife was. The Judge ignored photographs of the appellant and his wife together, showing a genuine relationship. Further, the issues raised by the appellant about the reasons why the interview records of their substantive interviews were not produced should be further explored. It may be that if the Judge had granted an adjournment, better evidence could have been provided to assist the appellant.
7. Mr Bajwa, who appeared for the appellant before the First-tier Tribunal, submitted that neither of the interviews had been provided save for one set of handwritten notes, which were barely legible, and which had been faxed to the appellant's solicitors the day before the hearing.
8. Mr Bajwa informed the Tribunal that he had requested an adjournment on the grounds that the substantive interview was missing, and that the handwritten notes were barely legible, and not in interview form. That application was refused.
9. He submitted that the adjournment should have been granted on the grounds of fairness and the Judge could then decide to what extent there were discrepancies in their answers.
10. The respondent accepted that the appellant and his wife were living together. The Judge accepted that the marriage was genuine from the sponsor's point of view but not from the appellant's. He submitted that it was difficult to reconcile that finding

in the light of the photographic evidence that was produced and given at the hearing. Evidence of the genuineness of their marriage included a set of photos which were dated by the camera showing several photos for each day for a period of six months. These covered birthdays, Christmas and other functions which were comprehensive. It would be difficult for anyone to fly in the face of such evidence that the marriage was not genuine. Over 300 photographs of the couple were produced from the day they met onwards.

11. The respondent's Rule 24 response contended that the appellant's grounds are opportunistic and advanced in disagreement with the negative outcome. The Judge properly considered the evidence and made sustainable adverse credibility findings. It was open to the Judge to conclude that on the totality of the evidence before him that the couple are not in a genuine and subsisting relationship and that the marriage was one of convenience.
12. Mr Duffy acknowledged that there had been deficiencies in the Judge's assessment of the appellant's case.

Assessment

13. I find that the decision of the First-tier Tribunal Judge involved the making of an error on a point of law.
14. The appellant's solicitors had only been provided with an illegible copy of the interview notes the day before the hearing. The appeal had been listed for a date in March 2015 but was adjourned on the application of the appellant's representatives as there was no copy of either of the two sets of interview notes given to the Home Office.
15. The Judge proceeded to find that there were discrepancies based on answers given before the Tribunal and found that they had been living together.
16. It is accepted that there may have been minor inconsistencies in their answers, but these were few and were in any event "answered" by the photographs despite the witnesses' memory of events in court. The asserted discrepancies related to their identification of different films. However, they indicated that they had watched different films on different occasions.
17. Moreover, as noted by First-tier Tribunal Judge Page, there is no reference at all to the photographs on the file. No findings were made about these photographs which were a substantial component in the appellant's evidence. That evidence should have been a factor in the assessment of the genuineness of the marriage.

18. In the circumstances, I set aside the decision. The parties submitted that this was an appropriate case for remittal to the First-tier Tribunal (Hatton Cross) for a fresh decision to be made by any other Judge. I accept that submission. The extent of judicial fact finding which is necessary in order for the decision to be re-made is extensive.

Notice of Decisions

The decision of the First-tier Tribunal involved the making of an error of law and is set aside.

The case is remitted to Hatton Cross for a fresh decision to be made on the issue as to whether or not the appellant's marriage to his sponsor constitutes a marriage of convenience under Regulation 2 of the 2006 Regulations.

The hearing date is 8 July 2016. A Lithuanian interpreter is required.

No anonymity direction is made.

Signed

Date 4 April 2016

Deputy Upper Tribunal Judge Mailer