



**Upper Tribunal  
(Immigration and Asylum Chamber)  
IA/40489/2014**

**Appeal Number:**

**THE IMMIGRATION ACTS**

**Heard at Birmingham**

**On 1 March 2016**

**Decision & Reasons  
Promulgated  
On 17 March 2016**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE CHAMBERLAIN**

**Between**

**SHAMREZ RAZZAQ**  
(ANONYMITY DIRECTION NOT MADE)

Appellant

**And**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Ms. S. Khan, Counsel instructed by Parker Rhodes  
Hickmotts Solicitors

For the Respondent: Miss. C. Johnstone, Home Office Presenting Officer

**DECISION AND REASONS**

1. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge Natayan, promulgated on 7 April 2015, in which he dismissed the Appellant's appeal against the Respondent's decision to refuse to vary leave to remain, and to remove him from the United Kingdom.
2. Permission to appeal was granted as follows:

“This application complains that the judge has not provided adequate reasoning to explain why it has been found that the Appellant did not intend to have a genuine and subsisting relationship with his wife. The judge at paragraph 44 accepted that the Appellant’s wife intended to have a genuine relationship with the Appellant. It is arguable that the judge has not provided adequate reasoning to explain why the evidence of the Appellant’s wife was accepted but the Appellant’s evidence was not. There is a paucity of reasoning in this decision, a decision I have not found easy to follow. The grounds of appeal merit further consideration so permission to appeal is granted.”

3. The Appellant attended the hearing. I heard oral submissions from both representatives, following which I reserved my decision.

### Submissions

4. Ms Khan relied on the grounds of appeal. She submitted that the judge’s reasoning was not clear as to why he had been willing to find for the Appellant’s wife, but not for the Appellant. The decision did not make sense. The Appellant’s wife was pregnant at the time. The judge accepts that the Appellant is the father. There was no consistency in the reasoning of the judge. The assessment of credibility was flawed.
5. In relation to the second ground of appeal, the judge had not considered the evidence of the Appellant’s sister-in-law. She had attended the hearing and was a material witness. I was referred to paragraphs [30] and [31]. The evidence had not been assessed. Further there was evidence from others who had attended the wedding. I was referred to paragraph [44]. The judge had not explained why the statements and photographs were not sufficient to show that the relationship was genuine and subsisting. The evidence should have been assessed in the round. I was referred to the letters of support from friends and relatives who had been at the wedding (from page 158 onwards) and to the photographs (page 180 onwards). The photographs of the wedding showed a number of people were present. The Appellant had gone to a lot of trouble, especially in relation to the Islamic wedding. This was not just passing cursory evidence.
6. In relation to the third ground, and the assessment of insurmountable obstacles, this was tainted by the adverse credibility findings. There had been evidence of insurmountable obstacles before the judge.
7. In response Miss. Johnstone submitted that paragraph [38] was separate from paragraph [41]. The credibility finding in paragraph [38] related to the specific concerns of the Respondent relating to dates and events. This was further set out in paragraphs [39] and [40]. The judge had listened to the cross examination of the Appellant and his wife. His findings were not perverse. To find perversity was an extremely high threshold. His finding that the Appellant’s wife intended to have a genuine and subsisting relationship was open to him. It was not perverse to find that the Appellant did not intend to have a genuine and subsisting relationship.

8. In relation to the second ground, the sister-in-law's evidence was not objective. The judge had considered the other evidence with care. I was referred to paragraph [44]. The fact that the Appellant had spent a lot of money on the wedding did not mean that the marriage was genuine and subsisting.
9. Cogent reasons had been given in relation to insurmountable obstacles. The judge found that there was no risk to the Appellant's wife from her ex-husband's family. They could live in Pakistan. The Appellant's wife had visited Pakistan quite recently. The judge had considered section 117B in detail in paragraph [51]. The Respondent's submission in the alternative was that the Appellant and his wife could live together in Pakistan.
10. In response, Ms Khan submitted that ground one was not an irrationality challenge, but challenged the reasoning as being confused and inconsistent. However, she submitted that it met the irrationality threshold. There were no clear findings made in relation to insurmountable obstacles. The appeal should be remitted to the First-tier Tribunal for rehearing.

#### Error of law

11. In paragraph [38] the judge states:

“I have found that both the Appellant and his wife S Bibi have not been credible witnesses and their evidence has been inconsistent on material matters which are in issue in this appeal.”
12. The judge makes this general credibility finding at the start of his findings. It was submitted by Miss. Johnstone that this finding was in relation to specific dates and events. However, I find that the wording of this paragraph does not bear this out. There is no indication that this finding is limited to any particular parts of the evidence. It is a finding that neither the Appellant nor his wife were credible witnesses in relation to “material matters which are in issue”. I find that this finding applies to all of the evidence of the Appellant and his wife.
13. In paragraph [44] the judge states:

“I accept the evidence of S Bibi that she is pregnant and that the Appellant is the father of the child who is expected to be born in August 2014. I however find that although S Bibi's intention is to have a genuine and subsisting relationship with the Appellant that the Appellant has not proved on a balance of probabilities that he intends a genuine and subsisting relationship with his wife.”
14. I find that this is in direct contradiction with the finding in paragraph [38] that the Appellant's wife was not a credible witness. Having found that they were both lacking in credibility, the judge then decides that one of them is telling the truth about her intentions, but that the other is not. No

reasons are given for finding that this aspect of the Appellant's wife evidence can be relied on and believed whereas the rest of her evidence cannot.

15. Paragraph [44] starts with a finding that the judge accepts the Appellant's wife's evidence that she is pregnant. I find that there is either evidence of a pregnancy or there is not – it does not go to the Appellant's wife's credibility. The judge links his acceptance of the Appellant's wife's evidence that she is pregnant and that the father of the unborn child is the Appellant, to the finding that she intends to have a genuine and subsisting relationship with the Appellant. He does not give reasons for this finding, and it cannot be said automatically to flow from the fact that she is pregnant with the Appellant's child. I find that it makes no difference to the Appellant's wife's intentions that she is pregnant. It is equally possible for a pregnant woman to have no intention to have a relationship with the father of her unborn child as it is for the father of that unborn child to have no intention to have a relationship with the mother.
16. The judge does not accept the Appellant's evidence that he intends a genuine and subsisting relationship with his wife, which is consistent with his finding that the Appellant was not credible, and that his evidence should not be accepted. However, his approach to credibility is not consistent overall, given the way in which he has treated the evidence of the Appellant's wife. I find that the judge has failed to explain why he has accepted this part of the Appellant's wife's evidence, having previously found her to be lacking in credibility. I find that it contradicts the finding in paragraph [38]. The judge's credibility findings are confused and inconsistent, and I find that this amounts to an error of law. As the Appellant's credibility and that of his wife goes to the core of their claim to be in a genuine and subsisting relationship, I find that this error is material.
17. In relation to the other evidence, in particular that of the sister-in-law, the judge sets out in paragraph [44] that he has considered the other evidence. However, while he does not need to set it out verbatim, there are no reasons given for why he has rejected this other evidence, which he must have done as he finds that the Appellant and his wife are not in a genuine and subsisting relationship. He gives no reasons for not attaching weight to the Appellant's sister-in-law's evidence.
18. In relation to insurmountable obstacles, this is directly affected by the judge's credibility findings, given that the evidence comes from the Appellant and his wife. I find that his confused and inconsistent credibility findings have tainted his approach to insurmountable obstacles.
19. Paragraph 7.2 of the Practice Statement dated 10 February 2010 contemplates that an appeal may be remitted to the First-tier Tribunal where the effect of the error has been to deprive a party before the First-tier Tribunal of a fair hearing or other opportunity for the party's case to be put to and considered by the First-tier Tribunal. Given the nature and extent of the fact-finding necessary to enable this appeal to be remade,

having regard to the overriding objective, I find that it is appropriate to remit this case to the First-tier Tribunal.

**Notice of Decision**

The decision involves the making of a material error of law. I set the decision aside.

The appeal is remitted to the First-tier Tribunal for rehearing.

Signed

Date 14 March 2016

Deputy Upper Tribunal Judge Chamberlain