



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: OA/01567/2015

THE IMMIGRATION ACTS

Heard at Manchester IAC
On 31st March 2016

Decision and Reasons Promulgated
On 13th April 2016

Before

UPPER TRIBUNAL JUDGE COKER

Between

AZMAT ULLAH
(no anonymity order made)

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr C Timson, counsel, instructed by Whitefield solicitors
For the Respondent: Mr G Harrison, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant was granted permission to appeal on the grounds
 - (i) that the First-tier Tribunal judge arguably failed to make findings on whether the appellant met the financial requirements of the Immigration Rules;
 - (ii) that it was arguable that the judge reached an inconsistent finding in that he found that the respondent's decision was not in accordance with the Immigration rules yet dismissed the appeal;

- (iii) that it was arguable that the judge gave insufficient or no reasons for rejecting the sponsor's claim of a genuine relationship yet finding the sponsor to be 'generally credible';
 - (iv) it was arguable that the judge gave insufficient consideration to the sponsor's father's evidence.
- 2. The appellant and the sponsor married in Pakistan on 28th September 2012. They lived together in Pakistan for a month and the sponsor (a British citizen) then returned to the UK. The sponsor has been diagnosed with undifferentiated schizophrenia and is on the Severe Mental Health Illness register. She was originally receiving Severe Disability Allowance, then Incapacity Benefit. Those benefits ceased when she went to Pakistan in 2010. On her return to the UK her GP practice wrote to confirm that she was 'presently not in employment due to ongoing mental health issues'. She produced evidence she was receiving Employment Support Allowance.
- 3. The appellant applied for entry clearance as a spouse in May 2014. The application was refused for the reasons set out in the decision dated 9th December 2014 namely
 - (i) That the ECO was not satisfied that his relationship with the sponsor was genuine and subsisting or that they intended to live together permanently in the UK;
 - (ii) That the sponsor was not exempt from the financial requirements as defined.
- 4. The grounds of appeal to the First-tier Tribunal made specific reference to the sponsor being exempt from the financial requirements because her illness meant that she met the exemption requirements under paragraph E-ECP.3.3. It was argued in the grounds that Severe Disablement Allowance – which she had previously been receiving – had been replaced by Employment and Support Allowance and she was thus exempt. The grounds of appeal further relied upon Article 8 and asserted that in accordance with the IDIs the couple's circumstances were such as to be exceptional and thus merited the grant of leave to enter outside the Rules. Following receipt of further documents and the grounds of appeal the application was reviewed by an Entry Clearance Manager who concluded that in the absence of any further information in support of the relationship, the conclusions of the Entry Clearance Officer that the couple were not in a genuine and subsisting relationship was sustainable. The ECM also stated that Employment and Support Allowance is not on the list of exemptions under Appendix FM and thus the sponsor must show an income of £18,600.
- 5. Mr Timson accepted that if the First-tier Tribunal judge's findings as to the genuineness and subsistence of the marriage held, then the failure to make findings on finance and Article 8 were irrelevant.
- 6. The consensus between the parties was however that the First-tier Tribunal judges findings and conclusions on the evidence as to the genuineness and subsistence of the relationship could not stand for the reasons contended for in the grounds seeking permission to appeal and the grant of permission.

7. For those reasons I am satisfied that the First-tier Tribunal judge erred in law and I set aside the decision to be remade.
8. In the light of the error of law found, there has been no legitimate hearing of the substance of the appeal at all and no preserved findings of any kind. The scheme of the Tribunals Court and Enforcement Act 2007 does not assign the function of primary fact finding to the Upper Tribunal. In these circumstances s.12(2) of the TCEA 2007 requires me to remit the case to the First tier with directions.

Conclusions:

The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.

I set aside the decision and remit the hearing to the First-tier Tribunal for hearing before a First-tier Tribunal judge other than judge B Cox.



Date 31st March 2016

Upper Tribunal Judge Coker