



**The Upper Tribunal
(Immigration and Asylum Chamber) Appeal number: OA/13272/2014**

THE IMMIGRATION ACTS

**Heard at Manchester
On February 16 2016**

**Decision and Reasons
Promulgated
On 24 February 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE ALIS

Between

**MR MUHAMMAD NAEEM MUSHTAQ
(NO ANONYMITY DIRECTION)**

Appellant

and

ENTRY CLEARANCE OFFICER

Respondent

Representation:

Appellant

Mr Syed (Legal Representative)

Respondent

Ms Johnstone (Home Office Presenting Officer)

DECISION AND REASONS

1. The Appellant is a citizen of Pakistan. The appellant applied for entry clearance as a spouse to enter the United Kingdom on May 28, 2014. The respondent considered his application and on September 7, 2014 refused it.
2. The appellant appealed this decision on December 1, 2014 under section 82(1) of the Nationality, Immigration and Asylum Act 2002.
3. The Entry Clearance Manager reviewed the decision on February 10, 2015 but upheld the original decision.

4. The appeal came before Judge of the First-tier Tribunal Pickup on June 26, 2015 and in a decision promulgated on July 10, 2015 he refused the appeal under the Immigration Rules and article 8 ECHR.
5. The appellant lodged grounds of appeal on July 24, 2015 submitting the First-tier Judge had erred by placing too much reliance on an earlier decision of Judge of the First-tier Tribunal Nicholson and having accepted there was evidence to support their claims to be married should have allowed the appeal.
6. Designated Judge of the First-tier Tribunal Shaerf gave permission to appeal finding it was arguable Judge of the First-tier Tribunal Pickup should have taken the earlier decision only as a starting point and should then have given consideration to the explanation contained in the letter dated June 9, 2014.
7. In a Rule 24 letter dated October 29, 2016 the respondent opposed the appeal. She argued the First-tier Judge had made adequate findings and there was no material error.
8. The matter came before me on the above date and I heard submissions from both representatives. The sponsor was in attendance.
9. The First-tier Tribunal did not make an anonymity direction and pursuant to Rule 14 of The Tribunal Procedure (Upper Tribunal) Rules 2008 I make no order now.

SUBMISSIONS

10. Mr Syed submitted the Judge of the First-tier Tribunal had accepted at paragraph [22] of his decision that there was evidence to support the marriage. He misquoted from the refusal letter referring to the respondent's finding the evidence submitted was not satisfactory when in fact the respondent had found it was not substantial. The Judge of the First-tier Tribunal placed far too much weight on the original decision of Judge of the First-tier Tribunal Nicholson when in fact there was a fresh explanation that should have at least been considered. The Judge of the First-tier Tribunal had placed far too much weight on an interview especially when the appellant was able to answer all but one question. There was evidence of photographs and passport stamps that should have been given more weight when considering whether the marriage was genuine and subsisting. The Judge of the First-tier Tribunal had been critical of photographs but they in fact showed the couple as a couple. He submitted there was an error in law.
11. Ms Johnston adopted the rule 24 response and stated the Judge of the First-tier Tribunal did not dispute the marriage had taken place but having considered the evidence concluded that the sponsor's claims did not move the case beyond the findings made by Judge of the First-tier Tribunal Nicholson. The witnesses had failed to address the dishonesty issues and this undermined her claims.

12. Mr Syed reminded me that the original decision was over five years old and the relationship had progressed since that date.
13. I reserved my decision.

DISCUSSION AND FINDINGS

14. This had been the appellant's third attempt to be admitted as a spouse. His first application had been refused by Judge of the First-tier Tribunal Nicholson in a decision promulgated on November 10, 2011. A second application had been refused because the appellant did not have the correct English Language test and this was therefore his third attempt to be admitted.
15. At paragraph [7] Judge of the First-tier Tribunal Pickup referred to the evidence that he had taken into account and that included the appellant's bundle consisting of 83 pages.
16. The appellant's current application had been refused because the respondent was not satisfied the marriage was genuine and subsisting. His application was refused having regard to Appendix FM and in short the respondent refused the application because of a lack of supporting evidence and the appellant's perceived poor knowledge of the sponsor. When the decision was reviewed the Entry Clearance Manager upheld the decision.
17. The thrust of Mr Syed's argument is that by concentrating on previous misdemeanours the Judge of the First-tier Tribunal lost sight of the issues in the case. Ms Johnstone argued that in assessing the marriage the Judge of the First-tier Tribunal was entitled to consider all matters known to him.
18. Mr Syed accepted at the hearing that the explanation for the false documents given by the sponsor at the hearing before Judge of the First-tier Tribunal Nicholson differed to what had subsequently been advanced in the appellant's solicitor's letter dated June 9, 2014. However, the fact a totally different explanation was now being advanced was a factor the Judge of the First-tier Tribunal was entitled to take into account.
19. At the hearing in February 2011 the sponsor blamed the "false documents" on a combination of things including a denial the payslips were fraudulent, a change of name meant the employer stated she did not work there and bad photocopies of bank statements.
20. The letter from the solicitors dated June 9, 2014 sought to address those issues and on page 4 of the said letter the solicitors no longer relied on the explanation put forward but suggested that neither the appellant nor the sponsor had been aware of any false documents and it was the fault of an immigration advisor who had been convicted for submitting false documents.
21. Mr Syed argues that the Judge of the First-tier Tribunal failed to consider this explanation anywhere in his decision and he submits that amounts to an error in law.

22. I accept the Judge makes no direct reference to the content of the letter but as stated before he does refer to the letter indirectly as it forms part of the appellant's bundle and he made it clear that he had considered all of the evidence before making any findings.
23. The Judge of the First-tier Tribunal observed that against a previous deception the respondent took a cautious approach to the evidence submitted. Which ever way the previous decision was dressed up the appellant cannot escape from the fact false documents were submitted and the sponsor had sought, at the earlier hearing to explain away the fact they were false whereas now it was accepted the documents were false and it was someone else's fault.
24. The Judge of the First-tier Tribunal noted the new evidence in relation to the genuineness of the marriage but between paragraph [14] and [23] the Judge of the First-tier Tribunal considered the evidence and at paragraph [22] he accepted there was reasonable evidence of five visits by the sponsor to the appellant, the fact a marriage took place, photographs to support the wedding and the Judge of the First-tier Tribunal concluded this evidence was supportive of a marriage but was not clear evidence that they were in a genuine and subsisting relationship.
25. Mr Syed pointed me to paragraph [23] in which the Judge of the First-tier Tribunal accepted there was some evidence capable of supporting the claim it was a genuine and subsisting marriage but then concluded for reasons given in the decision that the marriage was not genuine.
26. For the reasons given the Judge of the First-tier Tribunal upheld the finding on the evidence despite further evidence that had been advanced. The Judge of the First-tier Tribunal does not have to set out each piece of evidence but must demonstrate an engagement with the evidence being advanced.
27. The Judge of the First-tier Tribunal clearly engaged with the evidence and gave numerous reasons for rejecting this as a genuine marriage and in the circumstances I do not find the failure to mention specifically a document contained in the appellant's bundle did not amount to a material error. The Judge of the First-tier Tribunal had the benefit of seeing the sponsor give her evidence and he was entitled to make findings about her as he did.
28. The Judge of the First-tier Tribunal did not accept the marriage was genuine. He accepted there was evidence that could support that claim but he gave reasons for making an adverse finding.
29. I am satisfied there is no material error.

DECISION

30. The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law. I uphold the First-tier decision.

Signed:

Dated:



Deputy Upper Tribunal Judge Alis

FEE AWARD

I make no fee award as I have dismissed the appeal.

Signed:

Dated:



Deputy Upper Tribunal Judge Alis