



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/00590/2016

THE IMMIGRATION ACTS

Heard at Birmingham Employment Centre
On 8th September 2017

Decision & Reasons Promulgated
On 19th September 2017

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

MS KANWALJEET KAUR
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Alex Cisnekos (Counsel)
For the Respondent: Mr A McVeety (Senior HOPO)

DECISION AND REASONS

1. This is an appeal against a determination of First-tier Tribunal Judge Lloyd, promulgated on 3rd January 2017, following a hearing at Birmingham Sheldon Court on 9th December 2016. In the determination, the judge dismissed the appeal of the

Appellant, therefore the Appellant subsequently applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

The Appellant

2. The Appellant is a national of India, a female, and was born on 1st April 1985. She appealed against the decision of the Respondent dated 24th October 2015, refusing her entry clearance to join her fiancé, Mr Sukhdev Singh, in the UK, the latter having indefinite leave to remain in this country. The decision of the ECO was upheld by the ECM on 14th April 2016.

The Appellant's Claim

3. The Appellant's claim is that she was due to marry the Sponsor by way of an arranged marriage, and an engagement had taken place on 9th September 2015 during the Sponsor's visit to India, and the marriage was now to take place on 11th February 2016 at a Registry Office in Derby, followed by a reception in Wolverhampton on the same day.

The Judge's Findings

4. The judge acknowledged that the parties had met, that the proposed arranged marriage was in place, that cultural norms had to be taken into account in cases involving an arranged marriage, and that, although a lot of the communication evidence between the parties was postdecision, raising the possibility that this might have been manufactured to bolster the appeal, "there is no positive evidence of such manufacturing and I am prepared to accept these documents on face value" (paragraph 21).
5. On this basis, the judge was clear that, "I accept that the Appellant and Sponsor are in a genuine and subsisting relationship and that they intend to marry. I therefore also accept that they have met the Respondent's Grounds of Refusal" (paragraph 22).
6. Nevertheless, the judge then curiously, purported to refuse the appeal on the basis of human rights law, taking the decision that the Sponsor could relocate to India where the Appellant and the Sponsor could get married and enjoy family life together and that this would not interfere with their Article 8 rights (paragraph 26), and nor was the decision disproportionate in this respect (paragraph 28).
7. On 7th July 2017, permission to appeal was granted on the basis that the judge had already at paragraph 22 come to the firm view that the Respondent's Grounds of Refusal had been met, and yet the judge then proceeded to dismiss the appeal under Article 8. The judge had also overlooked the fact that in Izuazu [2013] UKUT 45, the approach to such cases was stipulated, such that a judge first had to apply the Immigration Rules, and only where the Claimant did not meet the requirements of the Rules, would it then be necessary to undertake an assessment of the situation under Article 8.

8. The Rule 24 response states that, “the judge did find the Appellant met the requirements of the Immigration Rules”.

The Hearing

9. At the hearing before me, Mr Cisnekos submitted that the judge had specifically made the following four findings in favour of the Appellant. First, that the Appellant’s fiancé, Mr Sukhdev Singh, had indefinite leave to remain in the UK (paragraph 2). Second, that the Appellant and the Sponsor had met (paragraph 21). Third, that the proposed marriage arrangements were in place in the UK (paragraph 21). Fourth, that the Appellant and the Sponsor were in a genuine and subsisting relationship and that they did intend to marry (paragraph 22). Mr Cisnekos submitted that the judge had erred in law by making an assessment of Article 8, having already found that the Appellant met the requirements of the Immigration Rules.
10. In reply, Mr McVeety submitted that he would have to concede that the judge had fallen into error because the Appellant had already satisfied the Immigration Rules, and her appeal ought to have been allowed.

Error of Law

11. I am satisfied that the making of the decision by the judge involved the making of an error on a point of law (see Section 12(1) of TCEA 2007) such that I should set aside the decision and remake the decision. My reasons are as follows.
12. First, it is plain that the judge (at paragraph 22 had found the Appellant and the Sponsor to be in a genuine and subsisting relationship, such that the concerns of the refusal letter had been met head on, and as such the appeal ought to have been allowed.
13. Second, the recourse in these circumstances to Article 8 was misconceived, if regard is had to **Izuazu [2013] UKUT 45**. The suggestion (paragraph 26) that, “taking all of this into account, I do not accept that, if they chose to do so, the Sponsor could not relocate to India where the Appellant and Sponsor could get married and enjoy family life together” is unwarranted. On this basis, no foreign marriage, that complied with the Immigration Rules could ever succeed. Human rights are a backup where a Claimant is unable to first satisfy the domestic provisions in the Immigration Rules, allowing him or her thereafter to fall back on general human rights provisions, as set down by the Strasbourg Human Rights Court and the European Convention on Human Rights. They are not to be used to frustrate a claim, that can properly be made out under domestic law and validly upheld, as that would be perverse.
14. I remake the decision on the basis of the findings of the original judge, the evidence before him, and the submissions that I have heard today. For the reasons that I have given above, I allow this appeal.

Notice of Decision

The decision of the First-tier Tribunal involved the making of an error of law such that it falls to be set aside. I set aside the decision of the Regional Judge. I remake the decision as follows.

This appeal is allowed.

No anonymity direction is made.

Signed

Dated

Deputy Upper Tribunal Judge Juss

18th September 2017

TO THE RESPONDENT
FEE AWARD

As I have allowed the appeal and because a fee has been paid or is payable, I have made a fee award of any fee which has been paid or may be payable.

Signed

Date

Deputy Upper Tribunal Judge Juss

18th September 2017