



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/00617/2017

THE IMMIGRATION ACTS

Heard at Field House
On 18 June 2018

Decision & Reasons Promulgated
On 25 June 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE HILL QC

Between

MRS FIZA IMRAN
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms E Daykin, Counsel instructed by Lex Sterling Solicitors
For the Respondent: Mr E Tufan, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal from the decision of First-tier Tribunal Judge Keith promulgated on 15 November 2017. The matter concerns the refusal of entry clearance in respect of the female partner - and I use that word advisedly - of Mr Hanif Imran who is a British national. I need not rehearse the unhappy immigration history as that is fully set out

in the decision of the First-tier Tribunal Judge. Put shortly, this is a case where the purported marriage (a ceremony of Nikah which took place in Pakistan on 14 February 2016, some three days after Mr Imran first met the appellant) was not valid. He was not free to marry because he was yet to secure a decree absolute in respect of a prior marriage from which there are two children.

2. The judge in a careful decision dealt first with the claim that arose under the Immigration Rules and then with the application of Article 8 outside the Rules. Ms Daykin who acts for the appellant today draws my attention to an infelicitous passage in paragraph 34 of the decision where the judge says this:

“The interference with the Appellant’s family life by the refusal of entry clearance has been limited, where the Appellant and Mr Imran’s desire for contact has been so limited; and therefore I do not find that the decision interferes with the Appellant’s rights under Article 8 to a sufficient extent to engage those rights.”

3. Ms Daykin was correct to point to this as being not in accordance with the approach commended in the case of **Razgar**. The proper course, Ms Daykin states correctly, is that one should recognise that the interference engages the right but deal with the extent of the interference as part of the proportionality exercise.
4. Fortunately in this case, as Ms Daykin fairly conceded, the judge went on to consider the questions of proportionality in paragraph 35 in the alternative, on the assumption that the assertion quoted above proved to be incorrect, as has in fact transpired. The judge says this:

“However, even had I concluded differently, I find that the decision to refuse entry clearance was in accordance with Immigration Rules and for a legitimate aim, and the question then remained whether it was proportionate. For the purposes of Section 117A of the 2002 Act, while the Appellant had achieved an English language qualification and it appears that she would not be financially dependent on the taxpayer, as Mr Imran is exempt from the income requirements as someone in receipt of incapacity developments, nevertheless, the decision was, I concluded, proportionate. The relationship between the Appellant and Mr Imran was of a very undeveloped nature; and the couple had not even begun to explore the alternative of them simply regularising the marriage and the Appellant reapplying for entry clearance. In the circumstances where the Appellant was so slow to apply for entry clearance in the first place and where Mr Imran had been able to visit the Appellant, the impact on her was not disproportionate and did not breach her rights under Article 8 of the ECHR.”

5. Ms Daykin points to what is said to be a misstatement on the judge’s part as to whether Mr Imran had raised or advanced his own limited circumstances as one of the reasons for not returning to Pakistan since he went. She very fairly concedes that financial means was one of a number of issues and was not perhaps pursued with particular rigour.

6. Looking at this matter in the round, it does not seem to me that any such misstatement had a material effect on the outcome of the appeal. There were various factors to be borne in mind in the balancing exercise and it does not appear that the misstatement, even if correct, was such as to vitiate the decision. It certainly does not render the decision unsafe.
7. Mr Tufan, on behalf of the Secretary of State, placed reliance on the decision in **SS (Congo)** and the fact that it would not be disproportionate to refuse entry clearance in circumstances where a proper application can be made where the requirements of the Immigration Rules might be satisfied. He referred me to paragraphs 81 and 82 of the judgment. Were the appellant and Mr Imran, the position might well be different.
8. The judge fairly weighed up all the material. The proportionality assessment cannot be faulted. Even where an error of law is apparent there is a statutory discretion in the Upper Tribunal as to whether or not to set aside a decision. In the circumstances of this case, it would not be appropriate to set aside the decision and accordingly the appeal is dismissed.

Notice of Decision

The appeal is dismissed.

No anonymity direction is made.

Signed *Mark Hill*

Date

21 June 2018

Deputy Upper Tribunal Judge Hill QC