



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/01691/2016

THE IMMIGRATION ACTS

Heard at Manchester
On 12th July 2018

Decision & Reasons Promulgated
On 25th July 2018

Before

Upper Tribunal Judge Chalkley

Between

NOUSHEEN KOUSSAR
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

ENTRY CLEARANCE OFFICER - UKVS SHEFFIELD

Respondent

Representation:

For the Appellant:

Mr Bates, a Senior Home Office Presenting Officer

For the Respondent:

Mr Hussain, Solicitor with Equity Law Chambers, Solicitors

DECISION AND REASONS

1. The appellant is a citizen of Pakistan who was born on 25th October 1984 and who claims to be married to Mr Howaaz Rashid ("the sponsor") who is a British citizen living in Oldham.
2. The appellant made application to the Entry Clearance Officer for entry clearance to the UK as the wife of the sponsor, but on 10th December 2015 her application was refused. Despite the decision having been reviewed by the Entry Clearance Manager, it was maintained. The appellant appealed to the First-tier Tribunal and her appeal

was heard by First-tier Tribunal Judge Catherine O'Neil at Bradford on 12th October 2017.

3. The issue before the judge was whether there was a subsisting marriage between the appellant and the sponsor and whether the parties intended to live together. That was agreed between the parties. The judge made findings starting at paragraph 22 of her determination which she analysed between paragraphs 38 and 42. The judge concluded that on the balance of probability the appellant had failed to show that she and the sponsor were in a subsisting marital relationship. As a result the appellant had failed to demonstrate that she met the Immigration Rules or that the decision of the respondent to refuse to grant entry clearance was a disproportionate interference and therefore a breach of Article 8. The judge dismissed the appeal.
4. Lengthy grounds of appeal were submitted to the First-tier Tribunal and on 19th April, First-tier Tribunal Judge E B Grant granted permission.
5. Mr Hussain told me that he relied on the grounds and that the judge had failed to give adequate reasons for her findings. She appears to have concentrated on the lack of photographs, see paragraph 32 of the determination. The judge accepted that calls were made between the parties, but he submitted, she ignores the fact that in *Goudey* the Tribunal said that the production of particular evidence is not required. I pointed out to Mr Hussain that the appeal had not been dismissed by the judge because the sponsor failed to produce a photograph of his wife or a photograph of him and his wife on their own; that was merely one of several reasons the judge gives for finding that on the totality of the evidence produced to her by the appellant she could not be satisfied that the marriage was genuine and subsisting. Similarly the judge accepted that the sponsor travelled to see his bride in Pakistan in 2017, but points out that visiting his bride was not the principal reason for his visit to Pakistan and she thought that if the parties had been married in 2014 and were in a genuine and subsisting marriage, it was rather a long time for the parties to go without seeing one another. That was a finding that she was entitled to make.
6. Mr Hussain pointed out that the judge made no finding in respect of the letters in the bundle passing between the parties during the ten years up to 2013, but with very great respect they are not capable of showing that there is a subsisting marriage today. Mr Hussain pointed out that the parties had exchanged greeting cards and that they had been written in an affectionate tone. He suggested that they would not have been written in an affectionate tone if there was no subsisting marriage. It was not the original intention of the parties to get married. The judge gave insufficient weight to the evidence in favour of the appellant.
7. Mr Bates, responding for the Entry Clearance Officer suggested that this was simply a "weight" argument where the Appellant simply believes that the decision was against the weight of the evidence. However, the weight to be given to a particular piece of evidence is a matter for the judge and for the judge alone and the judge was well aware that the parties were cousins, but she needed to be satisfied on the evidence before her

that the limited contact between the parties was evidence not simply from being cousins, but of being in a genuine and subsisting marriage. The Sponsor went to Pakistan in 2013 and again in 2017 with his mother. When he travelled in 2017 the purpose of going to Pakistan was not principally to see his wife; it was to attend a wedding. The appellant has produced no plausible explanation as to why he has not made more visits to see his wife and the judge was entitled to take that into account. The appellant was able to take his mother with him on two occasions and there would have been nothing to stop him taking her again had he really wanted to visit his wife. The judge pointed out in paragraph 27 of the determination that the appellant has failed to produce any evidence to substantiate the claim made by the sponsor that he rented a house for the parties in Pakistan after the marriage. That was a finding she was entitled to make. Similarly, she was entitled to make the finding she did in relation to whether or not the appellant's phone was broken. If it was broken simply because the screen was cracked it would have been possible for the sponsor to have had it repaired and if it contained photographs of his wife who he had only briefly seen in 2017 one might have expected him to get it mended. The broken phone explanation appears to have been a last minute explanation given by the appellant when he was cross-examined and was not accepted by the judge but the appellant did say that there were photographs on a memory card taken from a computer and agreed that there must be a computer with photographs on it but he has not done anything about producing copies. The judge was entitled to note that while the sponsor claims to be providing maintenance to the appellant he has produced no evidence to substantiate this. Similarly, the judge was entitled to note that the appellant does not carry a special photograph of his wife on his phone.

8. At paragraph 34 of her determination the judge has noted the affectionate greeting cards, but noted that they were brief and thought it curious that if affectionate noting cards were produced why had no letters or e-mails been produced. He submitted that the judge had very carefully considered all the evidence that had been submitted to her and was entitled to reach the conclusion she did.
9. Mr Hussain said that findings should have been made on the letters sent between the parties between 2003 and 2013 and because they show affection too. The appellant has photographs of his wife on his phone with other family members and there is nothing unusual about that Mr Hussain said. The claim that there is an absence of photographs ignores the fact that there were some, and in any event, case law does not require particular evidence of mutual devotion before entry clearance can be granted.
10. I briefly adjourned to enable Mr Hussain to confer with his client to see whether there were any other particular points he might wish to make. On resuming Mr Hussain told me that the sponsor and appellant were in a caring relationship. The sponsor needs to be with his wife and asked that I allow the appeal.
11. I reserved my decision.

12. The burden of demonstrating that an appellant meets the requirements of the Immigration Rules is on the appellant and, as this judge quite rightly pointed out the burden of proof is on a balance of probabilities.
13. here were eleven paragraphs in the appellant's application for permission to appeal.
14. The first paragraph suggested that the decision was against the weight of evidence, it was unreasonable and not sustainable. It failed to identify any material error of law. Simply to suggest that a decision is against the weight of the evidence discloses nothing but a disagreement with the decision. The weight to be given to the evidence is a matter for the judge and the judge alone.
15. The second challenge suggested that the First-tier Tribunal erred by not considering all the evidence. It suggested that the evidence such as greeting cards, letters, phone bills, WhatsApp messages were submitted but have not been thoroughly considered. It was suggested that the judge had not looked at all the evidence with anxious scrutiny and made an error. In fact, an examination of the determination makes it abundantly clear that at paragraphs 22 to 37 the judge very clearly did look at and consider all the evidence before her including greeting cards, phone bills and WhatsApp messages. At paragraph 34 the judge points out that there were in fact no e-mails or letters passing between the parties, although she did see a selection of greeting cards which appeared to be affectionate in tone but, commented the judge, were very brief. Paragraph 2 of the grounds fails to identify any error of law either.
16. The third paragraph repeats the claim that the First-tier Tribunal Judge attached no weight to the documentary oral evidence before her and appeared to attach a greater weight to the lack of photographs.
17. At the risk of repeating myself the judge's findings are perfectly clear and, with great respect to the author of the grounds, more than adequate. Between paragraphs 22 and 33 the sponsor explained that following the wedding he and the appellant went shopping together and went to restaurants and to a theme park, but he produced no photographs of such outings. The appellant claimed that he had to sell his telephone because the screen was broken and he could not retrieve any pictures, but this explanation only emerged when the sponsor could offer no explanation for the absence of any photographs. He did not explain how the screen being broken prevented him downloading his pictures to another device. The judge did consider photographs in the bundle. They were taken during the appellant's first visit to Pakistan when he married the sponsor in February 2014 and they show the sponsor and the appellant together with other family members at the wedding. The judge noted however that there were no photographs of the sponsor and the appellant as a reunited young couple holidaying together. That, with respect was a comment that she was entitled to make. Paragraph 3 discloses no error of law. At paragraph 4 it is suggested that at paragraphs 30 and 40(c) the First-tier Tribunal Judge has given "too much emphasis to the fact that the sponsor did not provide the appellant a home in Pakistan after their marriage" and also points out that the sponsor does provide the appellant with

financial support. The judge merely pointed out at paragraph 30 that despite claiming the sponsor supports the appellant financially there was no documentary evidence of such transactions. The judge also thought it curious that the appellant had failed to produce any evidence that he rented a house for himself and his bride following their marriage in Pakistan before he returned to the United Kingdom. Again the suggestion that the judge placed “too much emphasis” is nothing more than a disagreement with the judges’ decision. Paragraph 4 of the grounds does not disclose any error on the judge’s part either.

18. The fifth challenge suggests that the judge failed to give consideration to the fact that the sponsor is the primary carer for his mother and it is difficult therefore for him to visit Pakistan. With respect to the author of the grounds the judge did note that the appellant had returned to Pakistan in 2017 but his purpose for going (and also with his mother) was to attend a wedding. The primary purpose in going to Pakistan in 2017 was not to see his wife. It is clear from paragraph 35 of the determination that the judge was aware of the letter from the mother’s GP and that the sponsor was in receipt of a carer’s allowance, but on the two occasions he went to Pakistan he managed to take his mother with him. Paragraph 5 fails to identify any error of law. Turning now to paragraph 6 of the grounds, it suggests errors in paragraphs 41 and 42 of the determination, because the judge did not accept that the parties were in a genuine and subsisting marriage, despite the evidence having been submitted. Again this fails to identify any error of law on the part of the judge. It merely asserts that the judge found against the appellant and therefore the decision was wrong. It is a simple disagreement with the decision.
19. Paragraph 7 of the grounds suggests that the judge failed to make findings of fact “in relation to case law of *Goudey (subsisting marriage – evidence) Sudan* [2012] UKUT 00041 (IAC) and *GA (“Subsisting” marriage) Ghana* [2006] UKAIT 00046 in which it was held that matrimonial relationship must continue at the relevant time rather than just the formality of marriage. The appellant does not require the production of particular evidence of mutual devotion before entry clearance can be granted.” With great respect it might have assisted the author of the grounds had he read the whole of those decisions rather than simply the headnotes. The judge has not referred to either of those cases but there is nothing about the judge’s decision in this appeal which is contrary to either of those decisions.
20. In paragraph 8 of the grounds it was suggested that the sponsor produced and showed his mobile phone to the judge as evidence of pictures of himself and his wife and other family members. It suggested that the judge had not given any “recent findings of the photographs referred to”. Quite what that was intended to mean I do not know but at paragraph 31 the judge records that the sponsor does not carry a special photograph of his wife on the phone, but carries a series of family photographs in which she appears. That is the relevant finding. This challenge identifies no error of law either.
21. Paragraph 9 of the grounds refers to paragraph 33 of the determination where the judge accepted the sponsor’s evidence that he made calls to the appellant and her

family and says “therefore, this was a material factor to be considered when reaching her findings on the subsistence of marriage issue”. However this ignores what the judge said at paragraph 41 of her determination where she said:-

“The principal evidence relied on to support a finding of subsisting relationship are the records of telephone calls, text, What’sApp and Viper communications. I find it impossible to draw a conclusion from these records that there is a subsisting relationship between the sponsor and appellant. The Lycamobile records refer only to a short period between September 2015 and December 2015. There are some pages of screenshot from a telephone but I cannot tell the dates on which these calls have been made or their duration although I accept the sponsor’s evidence that these were calls made between himself and the appellant and her family and there are a lot of them. In the bundle there are also copies of text messages which all appear to be dated in December 2015. The text messages contain little content and there is no exchange of information about each other and what they are each doing, nor are there any references to their time together in Pakistan, nor are there are any reference to their plans for the future.”

22. The judge did take the evidence of the calls into account and paragraph 9 also fails to disclose any error of law on the part of the judge.
23. Paragraph 10 suggests that the findings, “have not reference to the case of *Goudey (subsisting marriage – evidence) Sudan* [2012] UKUT 00041 (IAC) and *GA (“Subsisting” marriage) Ghana* [2006] UKAIT 00046. It appears that the First-tier Immigration Judge has applied a high threshold to overcome with regards to whether a marriage is genuine and subsisting as per case law cited above. There is no specific requirement of types of evidence to show the marriage is genuine and she seems to import “supportive and affectionate” into the test which is wrong.”
24. It is not an error of law not to set out all the law which is one is applying when preparing a determination. Provided the judge demonstrates clearly that he or she is aware of and is applying the correct legal principles, that is sufficient. What this judge did was to look at all the evidence and then make her decisions. Without meaning to cause any offence, the author of the grounds really should read the whole of the determination rather than simply the case headnote.
25. It was for the appellant to produce whatever evidence she wished to support her claim and demonstrate that she and the sponsor are in a genuine and subsisting marriage and intend to live together, but that is what she had to demonstrate. The case of *Goudey* does not mean that an appellant does not need to produce evidence.
26. *GA (“Subsisting” marriage) Ghana* is a starred determination which means that it is required to be followed at all times. Just as in the case of *GA*, the many inconsistencies the judge highlights in this determination go to the heart of the claim that there has been a continuing and meaning relationship between the sponsor and appellant over the three or so years that they have lived apart. Mr Hussain’ complaint with the determination was in fact that it was wrong and against the weight of the evidence. That merely demonstrates a disagreement with the judge’s decision and does not identify any error of law on the part of the judge. The judge was entitled to look at the individual pieces of evidence the appellant relied on to show that she met the

requirements of the Rules and having made her findings of fact draw conclusions from those findings. That is precisely what the judge did.

27. The judge did not make any findings in respect of letters written up to 2013, but it is difficult to see how they could possibly show that there is a genuine and subsisting marriage following the wedding, which took place in 2014 and that it is the intention of the parties to live together.
28. I have concluded the making of the decision by First-tier Tribunal Judge O'Neil did not involve the making of an error on a point of law and I uphold her appeal. Appeal dismissed.

Richard Chalkley

Upper Tribunal Judge Chalkley

I have dismissed the appeal and therefore there can be no fee award.

Richard Chalkley

Upper Tribunal Judge Chalkley

dated 24 July 2018