



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/03183/2017

THE IMMIGRATION ACTS

Heard at Manchester
On May 18, 2018

Decision & Reasons Promulgated
On May 23, 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE ALIS

Between

[F E]

~~(NO ANONYMITY DIRECTION MADE)~~

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Aslam, Legal Representative

For the Respondent: Mr Bates, Senior Home Office Presenting Officer

DECISION AND REASONS

1. I do not make an anonymity order in this appeal.
2. The appellant had made an application under Appendix FM of the Immigration Rules for entry clearance as the spouse of a person present and settled in the United Kingdom.

3. The respondent refused the application on December 7, 2016 on the basis he was not satisfied the appellant and sponsor were in a genuine and subsisting relationship or that they intended to live together permanently in the United Kingdom.
4. The appellant appealed that decision under section 82 of the Nationality, Immigration and Asylum Act 2002 on February 16, 2017. The respondent reviewed the grounds of appeal but upheld his decision on November 14, 2017.
5. The appeal went before Judge of the First-Tier Tribunal Turnock (hereinafter called the Judge) on January 11, 2018 and in a decision promulgated on January to 31st 2018 the Judge dismissed the appeal finding that although there was evidence of a genuine and subsisting relationship the fact the sponsor had not disclosed to the appellant his sexuality, raised questions about whether the parties would intend to live together permanently in the United Kingdom.
6. The grounds of appeal were lodged on February 8, 2018 and permission to appeal was granted by Judge of the First-tier Tribunal Chohan on March 9, 2018. In giving permission the Judge Chohan found it arguable that the Judge had given contradictory and inadequate reasons for the findings made.

SUBMISSIONS

7. Mrs Aslam relied on the grounds of appeal and submitted that the Judge had erred by imposing his own views on what should and should not be disclosed in a marriage. The fact the sponsor had previously been a homosexual was not something that he had to disclose to the appellant and the Judge himself had made a finding being a bisexual did not prevent the parties having a genuine and subsisting relationship.
8. Mr Bates submitted that the Judge was entitled to make the finding that he had done because the marriage, according to the sponsor, had been entered into on the basis that both parties were heterosexual and the fact the sponsor admitted at the original hearing he had not discussed the fact he was bisexual was something the Judge could take into account when considering "intention to live permanently together in the United Kingdom".

FINDINGS ON ERROR IN LAW

9. The sponsor had come to the United Kingdom and had claimed asylum in 2003 based on the fact he was a homosexual and that if he was returned to his country of origin, Cameroon, he would face persecution.
10. The respondent raised sexuality for the first time at the original hearing. Mrs Aslam was given the opportunity to apply for an adjournment but after discussing the matter with the sponsor she indicated that she was content for the proceedings to continue.

11. During re-examination the sponsor confirmed to Mrs Aslam that the appellant knew nothing of his sexuality and he had not disclosed this to her because he loved her and would like to raise a family with her. He did not believe the fact he was attracted to men would be a problem.
12. Having heard this evidence, and in the absence of any statement from the appellant as to her view on the issue, the Judge concluded at paragraph 36 of his decision that he was not satisfied that this was a genuine and subsisting marriage or that it was the appellant's intention to permanently reside in the United Kingdom.
13. Mrs Aslam has submitted that the Judge was wrong to make the finding he did in paragraph 36 of his decision. I indicated during the hearing that the problem the appellant faced was that her representative on the day chose to proceed with the hearing without taking any instructions from her about whether such a disclosure would make a difference to her intention to live in the United Kingdom.
14. The Judge did not make a finding that being bisexual was a barrier to a genuine and subsisting relationship. The sponsor's evidence was that he continued to be bisexual and the Judge was entitled to consider their relationship in light of the fact there had been no disclosure to his wife of this issue.
15. If the sponsor had stated at the hearing that he was bisexual and the appellant was fully aware of his sexuality and that they had married with this knowledge then as the Judge stated this relationship could still be genuine and subsisting.
16. I have considered the decision of Goudey (subsisting marriage-evidence) Sudan [2012] UKUT 00041 (IAC) but find that this case does not assist me because the facts of this current case differ considerably.
17. The Goudey case considered what was needed to show a subsisting relationship. Where evidence of contact was provided then in the absence of countervailing factors an appeal should be allowed.
18. However, the Judge had to consider, in the absence of any evidence from the appellant, whether the sponsor's non-disclosed sexuality would impact on both their relationship and intention to reside together.
19. In dismissing the appellant's appeal the Judge did not state the parties could not be in a genuine and subsisting relationship but he concluded the non-disclosure could materially affect the appellant's decision to permanently live with the appellant. The Judge was unaware of the appellant's view because her representative took a decision to proceed without instructions on that point.
20. I find that there is no material error because the Judge considered all the evidence and in the absence of any evidence from the appellant as to her view about this disclosure the Judge was entitled to conclude the Immigration Rules were not met.

21. This decision does not prevent a future application being made but clearly any application would have to address the issues that arose during the original hearing and the appellant would have to satisfy the respondent that she did intend to permanently reside with the sponsor and that their relationship was genuine and subsisting.

DECISION

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

Signed

Date May 18, 2018



Deputy Upper Tribunal Judge Alis

TO THE RESPONDENT
FEE AWARD

I do not make a fee award because I have dismissed the appeal.

Signed

Date May 18, 2018



Deputy Upper Tribunal Judge Alis