



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/05554/2015

THE IMMIGRATION ACTS

Heard at Birmingham
On 19th June 2018

Decision & Reasons Promulgated
On 22nd June 2018

Before

UPPER TRIBUNAL JUDGE REEDS

Between

ZAHID SHAH
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr S. Woodhouse, instructed on behalf of the Appellant
For the Respondent: Ms H. Aboni, Senior Presenting Officer

DECISION AND REASONS

1. The Appellant is a citizen of Pakistan.
2. The Appellant, with permission, appeals against the decision of the First-tier Tribunal Judge Juss, who, in a determination promulgated on the 22nd March 2017, dismissed his appeal against the decision of the Respondent made on the 20th August 2017 to refuse entry clearance.
3. Permission to appeal was refused initially by the First-tier Tribunal but on renewal was granted by Upper Tribunal Storey on the 22nd November 2017.

4. The Appellant made an application for entry clearance as a fiance on the 5th June 2015. A decision was made on that application by the Entry Clearance Officer on the 20th August 2015 who refused the application. In respect of the current application, the Appellant was applying as a fiance with intention to marry in the UK. The ECO was not satisfied that he had submitted evidence of bookings or arrangements for the proposed wedding and further made reference to the interview responses of the Appellant which were inconsistent with evidence submitted on 25 August. The ECO was not satisfied that he was seeking entry to enable the marriage to take place.
5. The ECO made reference to the previous applications that were made by the Appellant which had been refused and the appeals were dismissed but that this was the first application to which he had been interviewed to establish the nature of the relationship. In this respect the ECO made reference to the Appellant's answers in interview which the ECO did not find to be consistent with his claim that this was a genuine and subsisting marriage.
6. The Appellant sought permission to appeal and the appeal came before the First-tier Tribunal on the 3rd March 2017. In a determination promulgated on the 22nd March 2017 the Judge dismissed the appeal.
7. At the hearing Mr Woodhouse relied upon the grounds submitted. He stated that the judge had demonstrated a lack of reasoning in his decision to dismiss the appeal. He directed the Tribunal to paragraphs 11 and 12 which were the only paragraphs in which the judge reportedly made any reference to the evidence. He submitted that those paragraphs were confusing and it was unclear what findings of fact he actually made.
8. He accepted that the Devaseelan principles applied given that there had been two previous decisions but stated that the first decision of IJ Telford had made no findings on whether this was a genuine and subsisting relationship. The second decision which was referred to by the judge at paragraph 11 did make reference to the evidence at that time, however in the current application the Appellant had produced further evidence of continuing contact in the form of itemised phone calls and correspondence, and evidence of remittances. There was also evidence of a further visit to Pakistan as evidenced by the air tickets and passport stamps.
9. Thus he submitted there was evidence to potentially overcome the issues identified by IJ Rose and the judge was required to conduct an assessment of all the evidence and it was here that the judge fell into error.
10. Ms Aboni on behalf of the Respondent relied upon the rule 24 response in which it was stated that the judge directed himself appropriately and gave adequate reasons for the conclusion which was open to him having made appropriate reference to the Devaseelan guidelines. The response also notes that the judge stated that Article 8 of the ECHR was not raised before the First-tier Tribunal although this was a human rights appeal. However it was not a material error because the findings made were to the effect that the Appellant could not satisfy the rules.

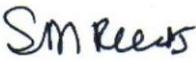
11. In her oral submissions Ms Aboni submitted that at paragraph 11 the judge relied upon the refusal notice and there was no error in relying on this which had set out reasons for doubting that this was a genuine and subsisting relationship and set out the inconsistencies in the evidence. The judge had adopted these reasons. There had already been a finding by IJ Rose that this was not a genuine and subsisting relationship. The judge did accept that there was some evidence of remittances but did not accept the other evidence and thus the Appellant had not addressed the issues set out by the ECO.
12. I am satisfied that the judge did make an error on a point of law as identified in the grounds advanced on behalf of the Appellant and in the grant of permission by judge Storey. The only assessment made by the judge of the evidence before him was at paragraphs 11 and 12. As Mr Woodhouse submits the reasoning is confused and unclear. He appears to rely upon the Respondent's reasons for refusing the application and the previous decisions made but does so without making an assessment himself of the evidence that was before him in assessing whether the claim relationship was genuine and subsisting.
13. I agree with Ms Aboni that the principles set out in the case of Devaseelan should have been applied and that the judge did make reference to that at paragraph 11. However the previous decisions were a starting point and not the endpoint of his assessment of the evidence. The previous determination of IJ Telford made no reference to whether this was a genuine and subsisting relationship and it is plain that he dismissed the appeal solely on the basis that there had been no valid marriage and made no other findings on the evidence. In the appeal before IJ Rose (which the judge did make reference to) there were findings of fact that there was an inconsistency as to when they had met and there was little evidence of contact between the parties. The judge made reference to there being no evidence of the circumstances of any visits made to Pakistan and no evidence to support them living together. He also found that there was insufficient documentary evidence of financial support thus he was not satisfied that the parties had provided a reliable account. The judge therefore found a lack of evidence of contact between the Appellant and the sponsor. In the present application, further evidence had been provided in support of their relationship including itemised phone evidence. In the last decision the judge was not satisfied that it could be demonstrated who were the recipients of the calls however the bills provided now identified the calls made by the sponsor to the Appellant by the provision of the telephone number as identified in the papers. The judge also made reference to a lack of remittances and again there were documents in the bundle at pages 115 - 132. There was also evidence of a further trip to Pakistan between December 2015 - February 2016 and passport entries and air tickets in support. Thus there was evidence to potentially address the issues identified by IJ Rose and it was incumbent of the judge to set out those issues and to conduct an assessment of that evidence in its totality. Whilst I accept that the judge did make reference to the remittances, he did not weigh the evidence as a whole in reaching a decision.
14. It is further clear that the judge relied on the reasons in the refusal letter but without making his own assessment. There is no error in placing reliance on those reasons if an assessment is conducted by reference to other evidence that has been produced by

the Appellant to counteract or explain those issues raised. When applied to this appeal, the sponsor had provided a witness statement in which she had sought to explain some of the inconsistencies that had been highlighted and relied upon in the decision letter. She also gave some oral evidence before the Tribunal. Thus it was incumbent on the judge to make an assessment of that evidence when reaching an overall decision on whether or not this was a genuine subsisting relationship in the context of the reasons given for refusing the application.

15. It is further agreed between the parties that the only ground upon which the appeal could be brought to the First-tier Tribunal was that the decision to refuse the Appellant entry clearance was unlawful under Section 6 of the Human Rights Act 1998 that is, it was contrary to Article 8 of the ECHR. The judge confusingly states at paragraph 13 that "Article 8 has not been raised before me". It is not clear to me on what basis he reached that decision. The issue for the judge to decide was not only to decide whether the Immigration Rules had been satisfied (although this is a matter of weight in determining the proportionality of denying any entry clearance) but whether refusing entry clearance would be contrary to Article 8 of the ECHR. The Immigration Rules reflect the Secretary of State's (and the ECO's) view as to where the public interest lies in the proportionality assessment under Article 8. A failure to lawfully assess whether the requirements of the Rules are met clearly impinges on the assessment of where the public interest lies in the overarching proportionality assessment required under Article 8. If the judge's conclusions on the genuineness of the relationship were properly made then there would be no material error in respect of this issue. However for the reasons I have given above, I am satisfied that the judge gave inadequate reasoning at paragraph 11 and 12 by failing to take into account all of the evidence when reaching an overall conclusion of what was the principal issue namely the genuineness of the relationship and whether it was subsisting or not.
16. For those reasons, I am satisfied that the decision of the First-tier Tribunal judge involved the making of an error of law and therefore the decision cannot stand and shall be set aside.
17. Under Part 3 paragraph 7.2(b) of the Upper Tribunal Practice Statement of the 25th of September 2012 the case may be remitted to the First-tier Tribunal if the Upper Tribunal is satisfied that:
 - (a) the effect of the error has been to deprive a party before the First-tier Tribunal of a fair hearing or other opportunity for that party's case to be put to and considered by the First-tier Tribunal; or
 - (b) the nature or extent of any judicial fact finding which is necessary in order for the decision in the appeal to be re-made is such that, having regard to the overriding objective in rule 2, it is appropriate to remit the case to the First-tier Tribunal.
18. In this case I have determined that the case should be remitted because a new fact-finding exercise is required and a complete re-hearing is necessary.
19. Thus the appeal shall be remitted to the First-tier Tribunal where it is anticipated that evidence will be given and factual findings made on all outstanding issues applying the correct legal framework.

Decision:

The decision of the First-tier Tribunal did involve the making of an error on a point of law and the appeal is remitted to the First-tier Tribunal.

Signed 

Date: 20th June 2018

Upper Tribunal Judge Reeds