Upper Tribunal
(Immigration and Asylum Chamber) HU/15294/2016

THE IMMIGRATION ACTS

Heard at Glasgow	**Determination & Reasons Promulgated**
on 8 November 2018	**On 14 November 2018**

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

MANDEEP LATHER

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

For the Appellant: Mr H Ndubuisi, of Drummond Miller, Solicitors
For the Respondent: Mr A Govan, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. This decision is to be read with:

   (i) The respondent's decision dated 2 June 2016, refusing the appellant leave to remain, based on family life.

   (ii) The appellant's grounds of appeal to the First-tier Tribunal.

   (iii) The decision of FtT Judge Green, promulgated on 6 October 2017.

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(iv) The appellant's proposed grounds of appeal to the UT, stated in the application for permission to appeal filed with the FtT on 20 October 2017.

(v) The refusal of permission by FtT Judge Pedro, dated 29 March 2018.

(vi) The appellant's grounds of appeal to the UT, stated in the application for permission to appeal filed with the UT on 4 May 2018 (substantially the same as the previous set of grounds).

(vii) The grant of permission by UT Judge Finch, dated 12 June 2018.

2. Mr Ndubuisi submitted that the decision was against the overwhelming weight of the evidence showing cohabitation and the level of interaction between the spouses, e.g. in payment of her benefits into his bank account. I did not uphold that submission. Cohabitation may go a long way towards proof of a genuine and subsisting relationship, but there can be one without the other, as the judge said at paragraph 17.

3. The grounds identify one clear error on a matter of fact. The judge noted at paragraph 16 "… the lack of any other supporting evidence such as photographs of the couple together". At pages 118 – 123 of the appellant's FtT bundle there were several photographs of the couple together.

4. Although perhaps not one of his major reasons, this was a point to which the judge attached some significance. The question is whether it can safely be said that the decision must have been the same, without this error.

5. The error infects the earlier reasoning to some extent, because some of the photographs show the couple in wider company, and the judge was suspicious of the paucity of wider vouching for their relationship.

6. The focus of the case changed somewhat from the refusal decision to the judge's decision. The respondent founded upon neither the appellant nor the sponsor being reliable witnesses, due to their past conduct. There was no explaining away the appellant's past conduct, and the judge founded heavily upon it. However, the judge accepted the sponsor's explanation for the one matter taken against her (her misunderstanding whether she was still in her first marriage; see the end of paragraph 15). He gave no reason for finding her unreliable, and made no express finding, although of course the outcome indicates that she was unreliable, even although the respondent's reason for so holding had been discounted.

7. There were also in the appellant's bundle at pages 351 – 360 copies of the couple's interviews by the respondent about their relationship. Mr Ndubuisi said that no discrepancies had been suggested by the respondent, and consistency at this stage was a significant point in favour of the appellant (paragraph 5 of the grounds). He accepted that these were items contained within a large bundle, and that they had not

particularly been drawn to attention of the judge. He said that was at least partly because the focus of the case had been on the issues raised by the respondent, based on past behaviour.

8. I would be slow to find error in not dealing with items taking up a small part of a 742-page bundle, without the judge having had his attention drawn to them.

9. The other criticisms made of the decision, apart from the slip over the photographs, would not require it to be set aside. However, taking that slip and those further points together, the point is reached where the decision cannot safely stand as a resolution of the case.

10. The decision of the FtT is set aside. It stands only as a record of what was said at the hearing.

11. There is a presumption that the UT will proceed to remake decisions, of which parties are reminded in directions issued with the grant of permission. However, the nature of this case is such that it is appropriate under section 12 of the 2002 Act and Practice Statement 7.2 to remit to the FtT for an entirely fresh hearing.

12. The member(s) of the FtT chosen to consider the case are not to include Judge Green.

13. No anonymity direction has been requested or made.

8 November 2018
Upper Tribunal Judge Macleman