



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/19062/2016

THE IMMIGRATION ACTS

Heard at Field House
On 3rd May 2018

Determination & Reasons Promulgated
On 23rd May 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

MR MD JAYDUL ISLAM
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr T Shah (Solicitor), Taj Solicitors
For the Respondent: Ms K Pal (Senior HOPO)

DETERMINATION AND REASONS

1. This is an appeal against the determination of First-tier Tribunal Judge Hetherington promulgated on 17th August 2017, following a hearing at Birmingham on 14th August 2015. In the determination, the judge dismissed the appeal of the Appellant,

whereupon the Appellant subsequently applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

The Appellant

2. The Appellant is a male, a citizen of Bangladesh, who was born on 10th June 1985. He came to the UK as a visitor on 14th August 2010 and did not return. On 16th March 2016, some six years later, he applied for leave to remain. This was rejected by the Respondent Secretary of State following consideration of paragraph EX.1 of Appendix FM and paragraph 276ADE of the Immigration Rules.

The Appellant's Claim

3. The basis of the Appellant's claim is that he has married a Mrs Begum, who had experienced a broken marriage, and is the mother of five children, for whom Mrs Begum's former children cares. Mrs Begum claims that she cannot return to Bangladesh because she is "fully accustomed to the British lifestyle" and has lived in this country for 25 years, although she speaks no English. The Appellant himself claims also to have "fallen in love with the British style" after arriving in this country in 2010 and becoming an overstayer thereafter. Mrs Begum was aware of his status and indicated that she did not mind because her own marriage had broken down. These were the background facts.

The Judge's Findings

4. The judge, against the basic background of the facts outlined above, observed how, although the Appellant and Mrs Begum claim to have lived together since June or July 2012, the only evidence of this was a water bill in joint names and a TV licence which was confusingly in the single name of "Mr J Islam-Begum" (see paragraph 16). Mrs Begum also claimed to see one of her children fortnightly for two days, but the judge did not accept this evidence (paragraph 17). The judge concluded that the Appellant and Mrs Begum had not given "a truthful account" and that, putting forward a claim on the basis that the two of them were married and in a family relationship, was "a blatant opportunistic attempt to create an unmeritorious claim". The judge also went on to hold that he could "attach little weight to the documentary evidence in the bundle" (paragraph 18). Accordingly, the judge did not conclude that the Appellant and Mrs Begum met the definition of a "partner" as defined in GEN.1.2 and that the evidence served to support the Appellant had discharged.
5. As to whether, on Article 8 grounds, the Appellant was entitled to remain in the UK, the judge concluded that the Appellant did not speak English and was not integrated into British society, was financially dependent on Mrs Begum, received a jobseeker's allowance, and there remained clearly a potential for reliance on public funds, which undermined the wellbeing of the country. This was an Appellant who had initially entered as a visitor and his presence had always been precarious, and although time can sometimes ameliorate a precarious presence, for most of the time that the Appellant had been in the UK, he had been here illegally (paragraph 21). Accordingly, undertaking the balancing exercise, it was not considered

disproportionate that the Appellant should return back to Bangladesh (paragraph 22).

6. The appeal was dismissed.

Grounds of Application

7. The grounds of application state that the judge erred in concluding that the Appellant and Mrs Begum were not in a genuine and subsisting relationship. The judge also failed to approach the matter of the basis of the Appellant's family and private life outside the Immigration Rules.
8. On 31st January 2018 permission to appeal was granted on the basis that the judge may have failed to take into account all the documents produced by the Appellant in support of his claim, because he had lived with his partner since June or July 2012, but the judge concluded in the determination that the Appellant had produced only a water bill and a TV licence.

Submissions

9. At the hearing before me on 3rd May 2018, Mr Shah, appearing on behalf of the Appellant, made three submissions. First, with regards to the Appellant's to fulfil the requirements of GEN.1.2, the judge erred in failing to have regard to all the documentary evidence, which had been carefully set out at paragraph 4 of the grounds. The judge had held that the Appellant and Mrs Begum could only muster evidence "that is a water bill in joint names and a TV licence" (paragraph 16). However, paragraph 4 of the grounds referred to a water bill for 4th July 2015, for 7th July 2015, for 9th January 2016 and for 24th December 2016. Paragraph 4 of the grounds also referred to a TV licence dated 31st May 2016 which was in joint names, for 31st July 2017 which was also in joint names, as well as a letter from Bury Park Jame Masjid, stating the Appellant's name and address (which was at page 46 of the Appellant's bundle). Mr Shah submitted that paragraph 16 of the determination gave no consideration to the entirety of this evidence.
10. Second, there were adverse credibility findings made (at paragraph 18), but apart from stating that both witnesses were unable to give "a truthful account", or had given a "fictitious account", or had engaged in "a blatant opportunistic attempt to create an unmeritorious claim", no reasons had been provided for why this conclusion had been arrived at in the conclusion reached by the judge at paragraph 18.
11. Third, as far as the Article 8 assessment was concerned, the facts of this case were that four of the five children were not living with Mrs Begum, but a Family Court decision had been provided to say that the youngest child, age 13, was picked up every Friday by Mrs Begum and stayed over with his mother during the weekend.

12. For her part, Ms Pal submitted that the judge did set out (at paragraph 8) the fact that he had received a bundle of documents and that “it is not necessary for me to set out the contents in detail”.
13. Second, the Appellant was cross-examined, and so oral evidence was heard, and the judge found that there was a paucity of evidence, and this is recounted by the judge at paragraphs 16 to 18 of the determination.
14. Third, as far as Article 8 was concerned the judge undertook a balancing exercise (see paragraphs 20 to 23), taking into account the precarious nature of the Appellant’s immigration status, together with the public interest considerations, as well as all the factors relating to the Appellant. There was no error of law.
15. In his reply, Mr Shah returned to stay that the judge failed to take into account all the documents set out at paragraph 4 of his grounds of application, and to assess their relevance in the context of the Appellant’s claim.

No Error of Law

16. I am satisfied that the making of the decision by the judge did not involve the making of an error on a point of law (see Section 12(1) of TCEA 2007) such that I should set aside the decision. My reasons are as follows.
17. First, this is a case where the judge heard evidence that the Appellant, who had delayed regularising his illegal presence for a number of years, “claimed he was told by those who know about these things, to establish a relationship. And that is what he claims he has done” (paragraph 13). However, although his claim is that in 2012, after knowing Mrs Begum for six months, he entered into an Islamic marriage, as the judge explained “he has no evidence of it” and that “he claims that the Islamic priest could not provide one” (paragraph 13). At the hearing before me, Mr Shah, who made valiant efforts to persuade me otherwise, submitted that the marriage was genuine, and that there were twelve photographs of the Islamic marriage, but the Imam of the mosque would not provide a certificate for an Islamic marriage unless there had been a civil marriage recorded as well. However, as the judge found, even if this is true, “Mrs Begum was not, of course, then free to marry in a legally recognised marriage as she was married” already and her marriage ended on 21st March 2016, according to the Appellant’s evidence (paragraph 13).
18. Second, the nub of the challenge to the decision of Judge Hetherington hangs on paragraph 16 of his determination where he stated that, although the Appellant and Mrs Begum claimed to have lived together since June or July 2012, “all they can muster to evidence that is a water bill in joint names and a TV licence” (paragraph 16). Mr Shah submitted that this failed to do justice to the full extent of the evidence before the judge, which Mr Shah had set out at paragraph 4 of the grounds of application, where eight itemised pieces of evidence had been highlighted. Whilst this is so, practically all of this evidence consists of nothing more than water bills, together with two TV licencing letters, for 2016 and 2017.

19. The question then is whether, in the light of such positive evidence, the judge has materially erred in law by stating that the Appellant and Mrs Begum could only muster evidence in the form of “a water bill in joint names and a TV licence” (at paragraph 16). I am not satisfied, despite Mr Shah’s well-measured submissions to persuade me otherwise, that this is the case. This is, because the judge did not find the Appellant and Mrs Begum to be witnesses of truth (paragraph 18). It is true that Mr Shah submits that the judge’s rejection of the evidence on the basis that the witnesses were before him were giving only a “fictitious account” is devoid of any reasons at paragraph 18. However, the judge did give reasons in the preceding paragraphs as Ms Pal made clear, and this is to be seen at paragraphs 15 to 17 of the determination. The judge did not accept the evidence in relation to child arrangements, did not accept that she only saw her children “in the street”, and the judge was concerned that there was no family court consent order detailing the arrangements in relation to the children (at paragraph 15).
20. The question is whether the judge’s ultimate conclusion, namely, that the parties had put forward a fictitious account of a relationship in “a blatant opportunistic attempt to create an unmeritorious claim” (at paragraph 18) is unsubstantiated. Although the judge could have given more reasons, I am satisfied that the determination, when read as a whole, is not devoid of reasons, and the conclusions reached by the judge were open to him.

Notice of Decision

There is no material error of law in the original judge’s decision. The determination shall stand.

No anonymity direction is made.

Signed

Date

Deputy Upper Tribunal Judge Juss

18th May 2018