



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/24877/2016

THE IMMIGRATION ACTS

Heard at Manchester
On 22nd August 2018

Decisions Promulgated
On 11th October 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE FARRELLY

Between

MR SHERIYAR SHERIYAY
(NO ANONYMITY DIRECTION MADE)

Appellant

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the appellant: Mrs HS Randera, Counsel, instructed by Parkview Solicitors
For the respondent: Mr A Tan, Home Office Presenting Officer

DETERMINATION AND REASONS

Introduction

1. The appellant is a national of Pakistan, born on 21 May 1983. On 23 June 2016 he applied for entry clearance to be with his wife, Mrs Shabina Ali Akhtar, hereinafter referred to as his sponsor. She was born on 19 January 1970. Her family came here when she was a child and she holds British nationality. She is employed as a solicitor. She was married before and has an adult son. The appellant is her maternal first cousin.
2. His application was refused on 5 October 2016. It was considered under appendix FM. The respondent concluded he had not demonstrated the marriage was genuine and subsisting. The claim was he met his sponsor in December 2013 and they married in October 2014. He had submitted photographs which were mainly of his wedding and a limited number of

'WhatsApp' printouts. The respondent expected greater evidence to have been produced of demonstrate regular contact, emotional support and an abiding interest. It is for the appellant to demonstrate he meets the immigration rules.

3. A further point taken related to accommodation. The appellant had indicated he would live with his sponsor at [] which he said his wife owned. However, the Land Registry certificate and the mortgage statements indicate that the property is in joint names, his sponsor and a Mr Amran Ali, who she says is her brother. There was no written consent from him to the appellant moving into the property.

The First-tier Tribunal.

4. The appeal was heard on 30 January 2018 before First-tier Tribunal Judge Moxon. In a decision promulgated on 6 February 2018 it was dismissed.
5. The account was that the appellant had been living with his parents and siblings and in 2013 his father died. His father is the brother of his sponsor's mother. She stated that on the death of his father she contacted him in 2013 to express her condolences. They maintained contact to the point where they decided to marry. His sponsor travelled to Pakistan in October 2014 where she remained for several weeks, living with her husband and his then widowed mother and sister. His sponsor said that at the outset the relationship with his family were good but quickly deteriorated because they were suggesting she had not provided the dowry and gifts expected. The sponsor also expressed difficulties adjusting to life in the appellant's family's home where his mother was the head of the household and she was expected to comply with her wishes and carry out domestic duties. The sponsor returned again to Pakistan in December 2014 for several weeks but again found the relationship with her in-laws difficult. She had not seen the appellant in person since.
6. The sponsor told First-tier Tribunal Judge Moxon that the property she lives in is in reality her own. She is the only one living there and she pays the mortgage and the outgoings. She said that the property was placed in joint names with her brother in case the sponsor became involved with someone who would make a claim on the property. It was said that the reason behind this was so that property would go to the sponsor's son from her first marriage.
7. First-tier Tribunal Judge Moxon was influenced by the fact that the appellant and his sponsor had not seen each other for three years. The judge felt that if the relationship were genuine the sponsor would have put up with his in-laws behaviour. Alternatively, they could have met in another part of Pakistan or in a third country. The judge noted the application was not made until 18 months after the marriage. Additional evidence of contact had been

provided and the judge questioned why this had not been provided with the application.

8. Regarding the property the judge referred to the lack of corroborative evidence about the arrangement from her brother.
9. The judge acknowledged that the sponsor was an officer of the court accepted that this enhanced her general credibility. However this did not outweigh the delay in the application and the separation of the parties in the last three years.

The Upper Tribunal

10. Permission to appeal to the Upper Tribunal was granted on a renewed application by Upper Tribunal Judge Lindsley. The application is set out and the judge found the grounds arguable.
11. The grounds are lengthy but emphasise the fact that the sponsor is a solicitor and her evidence should be given particular weight. It was also contended the judge erred in drawing inferences from the lack of direct contact between the parties for several years. It was argued that the judge failed to attach appropriate weight to the evidence of indirect contact provided. On the question of accommodation the sponsor had given an explanation in relation to her brother's interest and it was suggested the judge erred in rejecting this.
12. At hearing, Mrs HS Randerer relied upon the grounds advanced in the permission application. She submitted that the lack of direct contact between the parties was not determinative. She also emphasised the sponsor's standing as a solicitor. She said that this was not an arranged marriage. She referred to the evidence of money transfers and so forth. Regarding accommodation, the sponsor lived in the property alone. I was advised she could not obtain information about her brother because her family were not supportive.
13. Mr Tan in response said that the judge was entitled to attach weight to the delay between the marriage and the application and the limited direct contact after. The evidence of communications provided was only subsequent to the application and it was as a matter for the judge to decide what weight should be attached to the evidence.

Consideration

14. I find no material error of law established in the decision of First-tier Tribunal Judge Moxon. There were two issues to determine. The first was whether the marriage was genuine and subsisting and the second related to accommodation.

15. There is no principle in law that a solicitor's evidence or that of any other professional should be given more weight than any other individual. Rather generously the judge in fact did acknowledge the sponsor's standing enhanced the weight of her evidence.
16. The judge took into account legitimate considerations in assessing the relationship. Firstly there was a delay in making the application. Thereafter there were two visits, the last in which was in December 2014. It was legitimate for the judge to ponder why, if this were a genuine relationship, there had not been more visits. The sponsor indicated she was earning over £40,000 at the time. Consequently, finance should not have been an issue. The judge considered whether for the sake of her relationship with the appellant she would have tolerated his family. The judge also suggested they could have met in another part of Pakistan or in a third country. These are sensible observations and I fail to see how a suggestion of cultural issues take away from the points made.
17. Regarding the accommodation arrangement, the judge correctly noted that the sponsor's brother had an interest in the property and there was no evidence as to his consent. Mrs HS Randera advised me that there was no evidence from him because her family were not supportive. This disharmony was not disclosed at the First-tier Tribunal. It is all the more reason for questioning the availability of accommodation. The judge had described the appellant's explanation as to why her brother's name appeared on the title deeds as being confusing. Whatever the reason, his interest in the property is such that his consent would be required. This was not forthcoming.
18. In summary I can find no material error of law in the decision of the judge. The judge carefully analysed the evidence and made logical conclusions. There is not necessary for the judge to specifically say the sponsor was not credible as this can be inferred from the outcome.

Decision

No material error of law has been demonstrated in the decision of First-tier Tribunal Judge Moxon. Consequently, that decision dismissing the appeal shall stand.

Francis J Farrelly

Deputy Upper Tribunal Judge