



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: HU/14798/2018

THE IMMIGRATION ACTS

**Heard at Manchester
On 24th June 2019**

**Decision & Reasons Promulgated
On 05th July 2019**

Before

Upper Tribunal Judge Chalkley

Between

**AZKAR AHMED
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M Aslam of Counsel, instructed by Sheratons Solicitors Ltd

For the Respondent: Mr Tan, a Senior Home Office Presenting Officer

REASONS FOR FINDING AN ERROR OF LAW

1. The appellant is a citizen of Pakistan and he appeals the decision of the respondent taken on 5th July 2018, to refuse to grant him leave remain in the United Kingdom on the basis of his Article 8 rights, namely his family life with his claimed British partner [RP]. The respondent refused the application considering that the claimed relationship was not genuine, since the parties were involved in a sham marriage. The appellant appealed to the First-tier Tribunal and his appeal was heard by First-tier Tribunal Judge Mark Davies at Manchester Piccadilly. At paragraph 5 of his determination the judge said this:-

“The burden of proof rests on the appellant. He must satisfy me on the balance of probability that he can meet the requirements of the Immigration Rules. In this marriage the respondent contends that the appellant entered into a sham marriage with his sponsor. The initial burden of proof rests on the respondent to satisfy that that is the case. If they raise evidence to suggest on the balance of probability that that is the case the burden then shifts to the appellant to satisfy me to the same standard that his marriage to his claimed wife and sponsor is genuine and subsisting and not a sham marriage.”

Unfortunately, having set out the evidence and cross-examination and the submissions of the representatives the judge then, at paragraph 34, makes his findings the very first finding he makes is as follows, “I am satisfied that the appellants cannot discharge the burden of proof upon them and satisfy me that they have ever or are currently in a genuine subsisting relationship namely between a husband and wife.”

2. Then in paragraph 35, he goes on to suggest that the evidence emanating from an interview conducted by the respondent indicates that the appellant and the sponsor had entered into a sham marriage. With very great respect to him, he should have applied the test in the way he set out in paragraph 5 of his determination. There are other matters in the determination which suggests that the finding at paragraph 35 may be difficult to sustain but, I concluded that the determination cannot stand in any event and despite submissions to me to the contrary by Mr Tan, I have concluded that the determination should be set aside and the matter remitted to the First-tier Tribunal to be heard afresh by a judge other than First-tier Tribunal Judge Davies.

No anonymity direction is made

Richard Chalkley

Upper Tribunal Judge Chalkley

Direction

The respondent is directed within fourteen days of the date of delivery of these reasons to file with the First-tier Tribunal and to serve on the appellant’s solicitors, Sheratons Solicitors Limited of 86 Easton Street, High Wycombe, Bucks HP11 1LT, a complete copy of the typed record of interview conducted with the appellant and the sponsor.

Richard Chalkley

Upper Tribunal Judge Chalkley

Dated 02 July 2019