Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/13434/2018

THE IMMIGRATION ACTS

Heard at Manchester
On 1st May 2019

Decision and Reasons Promulgated
On 30th May 2019

Before

DEPUTY JUDGE UPPER TRIBUNAL FARRELLY

Between

M F K
(ANONYMITY DIRECTION MADE)

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the appellant: Miss G Patel, Counsel, instructed by Broudie Jackson and Canter (Dale House)
For the respondent: Mr A Tan, Senior Presenting Officer

DECISION AND REASONS

1. The appellant is a national of Pakistan. He came to the United Kingdom with leave as a student in September 2009. Thereafter, he made various applications. He was granted further leave to remain as a student until October 2014.Subsequent applications were unsuccessful. The last of these was refused in August 2015. Then, in September 2015, he made a claim for

protection. That claim was refused on 12 November 2018. His appeal against that decision was unsuccessful.

2. The basis of his claim is his relationship with a Mrs K. Mrs K is also from Pakistan and came here as a student. Her husband remained in Pakistan. She made an earlier claim for protection similar to the appellant's which was refused and dismissed on appeal. She and the appellant now have 3 children; [M], born in March 2012, [Z], born in January 2016 and [A], born in 24 March 2017. The appellant claims to fear not only his own family but also the family of Mrs K.

3. In refusing his claim the respondent did not accept he had established a real risk from either family. His credibility was questioned and reliance was placed upon section 8 of the 2004 Act. If the claim were true then the respondent concluded there would be sufficiency of protection for him and he could relocate. Reference was made to the best interests of the children and the conclusion was it would be best served by return to Pakistan with both parents.

4. The appellant's appeal was heard by First-tier Tribunal Judge Davies at Manchester on 2 January 2019. In a decision promulgated on 18 January 2018 it was dismissed.

The Upper Tribunal

5. Permission to appeal to the Upper Tribunal has been granted on the basis it was arguable the judge was wrong to consider himself bound by the findings made in the decision of Mrs K. Her appeal was heard in Manchester before First-tier Judge De Haney and dismissed in a decision promulgated on 3 June 2015.It was also argued that the judge failed to give adequate reasons behind the decision.

6. First-tier Judge De Haney had found that Mrs K was in fact divorced from her husband in Pakistan, something she denied. The judge also found that she had married this appellant in an Islamic marriage ceremony in the United Kingdom. The judge had also found that her family were supportive of the relationship between Mrs K and the appellant.

7. First-tier Tribunal Judge Davies heard from the appellant and Mrs K. The judge did not find either credible. The judge said:

> 68.I have paid particular regard to the findings made by Immigration Judge De Haney in his decision promulgated on 3 June 2015… I have taken into account the evidence of the appellant's partner in that regard but I am satisfied to the lower standard that her evidence commenting on Immigration Judge De Haney's findings is as he concluded fabricated

I take into account that this appeal hearing is not an appeal against the findings made by Immigration Judge De Haney. No evidence had been put before me to suggest that Immigration Judge De Haney's decision was successfully appealed against and therefore I am bound by the clear and cogent findings made…

70. The evidence before me indicates that the Appellant and his partner are indeed husband and wife having gone through an Islamic marriage ceremony. Therefore their children are not children who have been born outside wedlock. I therefore conclude that the Appellant's claim to be in need of international protection is wholly without merit.

8. Miss Patel relied on the grounds of appeal and the grant of permission. She said this was not a Devaseelan situation and even if it were, the earlier decision is the starting point not the end of the matter. She also argued that the reasoning behind the decision was inadequate. She referred me to paragraph 69 when the judge stated without further reasoning `The Appellant's partner's evidence as to why she had stated she was married to the appellant previously is wholly without credibility'.

9. Miss Patel submitted the judge did not properly consider the evidence of the appellant. An explanation had been given as to why the families were told of the relationship and this was not considered. She referred to the threatening text messages which prompted the claim. It was argued in the alternative that the family could relocate within Pakistan. However, she submitted their location would be revealed through the presence of their children and the judge had not considered this.

10. Mr Tan opposed the appeal and referred me to paragraph 29 where the judge refers to taking all the evidence into account, including the decision of First-tier Immigration Judge De Haney. I was referred to the cross-examination of the appellant at paragraph 34 and 35. He adopted the rule 24 response which cited the decision of Ocampo which at paragraph 24 said:

> "… Re- litigation of issues which have already been resolved is contrary to the public interest, and nothing in the process suggest that the first application should or must automatically be treated as irrelevant to second applications…"

11. At paragraph 71 the judge gave an explanation for rejecting the explanation given as to why their families were told. He submitted in the circumstances it was not necessary to set out findings in detail. At paragraph 74 the judge had referred to the documents produced and having concluded if they were married there was no logical basis behind the claimed threats. Regarding the question of relocation, he submitted that no evidence has been led as to how the family could be traced through the children.

12. In response, Miss Patel referred me back to paragraph 68 where the judge referred to being 'bound' by the previous decision. She accepted that if the judge had said the previous decision was the starting point that the challenge would fall away. She said that the 2 grounds upon which permission was granted were in the alternative. She said the judge did not properly consider the evidence or the witness statements of the parties. Rather, the judge made the bare assertion about them being married.

Consideration

13. First-tier Tribunal Judge Davies was presented with a bundle on behalf of the appellant for the appeal. This contains detailed statements from the appellant and Ms K. The statements seek to refute the conclusion that Ms K is divorced from her husband and has married the appellant. In her statement she details her visit Visa appeal and seeks to explain why she had told her lawyer she was divorced.

14. The bundle contains the decision of First-tier Tribunal Judge De Haney. That decision records Mrs K's account whereby she said she came to the United Kingdom in September 2004 and then returned to Pakistan in 2006 to marry. She stated she then returned to the United Kingdom to finish her studies, returning to Pakistan the following year. There is reference to her wanting to be divorced from her husband but claiming her family would not allow this.

15. She then came back to the United Kingdom in March 2011.She then gave birth to her 1st child by the appellant in March 2012. There was a further pregnancy in November 2013 but the child was stillborn in July 2014. They now have 2 other children.

16. Reference was made to an earlier student Visa appeal where she stated she had married the appellant in an Islamic ceremony in July 2011. There was reference to a witness statement in that earlier appeal in which she refers to an Islamic marriage to the appellant. Before Judge De Haney she denied such a marriage took place, stating she had lied in her statement and before that tribunal.

17. Judge De Haney concluded that Mrs K was not a witness to the truth. At paragraph 26 judge concluded that when she returned to the United Kingdom in 2011 she was divorced from her husband and subsequently married the appellant.

18. Devaseelan v Secretary of State for the Home Department [2002] UKIAT 00702 gave guidance on the extent an adjudicator in an appeal based solely on human rights grounds should rely on finding made in a previous

determination dealing with an asylum claim. The case arose because following an unsuccessful asylum claim a further claim could be made that removal would breach the persons human rights.

19. The guidance given was that the first Adjudicator's determination should always be the starting-point. Facts happening since the first Adjudicator's determination can always be taken into account by the second Adjudicator. If before the second Adjudicator the Appellant relies on facts that are not materially different from those put to the first Adjudicator the second Adjudicator should regard the issues as settled by the first Adjudicator's determination and make his findings in line with that determination rather than allowing the matter to be re-litigated.

20. The present situation is different in that the appeal before First-tier Tribunal judge De Haney concerned Mrs K rather than this appellant. Furthermore, the appeal was heard in May 2015 and the present appeal in January 2019.Nevertheless, the same central issue arose in both appeals, namely, the marital status between the parties. Between the 2 appeals Mrs K had further children. In the 2nd appeal both parties gave evidence and there was an appeal bundle provided. So far as a core issue was concern there was little by way of new evidence.

21. In Ocampo v Secretary of State for the Home Department [2006] EWCA Civ 1276 it was pointed out it was doubted that the principles of res judicata or issue estoppel have any application, certainly in their full rigour, to appeals before immigration tribunals. However, the Devaseelan guidelines are relevant to cases where the parties involved are not the same but there is a material overlap of evidence. This clearly is the situation here.

22. It is highly desirable that there is consistency between judicial decisions on the same issue. There may be good reasons for different outcomes. For instance, evidence may have been produced in the 2nd appeal which provides a basis for not following the outcome of the 1st. There may have been changes in the interval.

23. In the present appeal although the judge refers at paragraph 68 to being bound by the previous decision I find the judge did not mean this literally. Had the judge adopted this approach there would have been no need to have set out all the details given in the decision. At paragraph 29 the judge referred to the evidence at hearing and the submissions whilst commenting that the earlier decision was particularly pertinent. Given the common issue this is really an obvious point. However, the approach of the representative indicated that the relationship between the appellant and Mrs K was in dispute at that hearing. Both were cross-examined about their relationship.

24. Notably, in the 1st appeal this appellant did not give evidence and there was reference to a breakdown in the relationship turned out to be temporary. First-tier Tribunal Judge Davies had the benefit of hearing from both. At paragraph 38 he records that the appellant was asked if Mrs K had tried to obtain a divorce from her husband. He did not answer questions about this until the judge reminded him of the nature of the proceedings, as set out at paragraph 31.the judge had a detailed statement from Mrs K where she sought to reargue the conclusion made by First-tier Tribunal judge De Haney.

25. First-tier Tribunal Judge Davies at paragraph 68 indicated he was having particular regard to the findings made by First-tier Tribunal judge De Haney. Given the common issues arising and the evidence upon which the earlier decision was made this was an obvious thing to do. The judge refers to taking into account the explanation provided by Mrs K but rejected it. At paragraph 70 the judge referred to the evidence before him. Clearly therefore the judge is not simply adopting the earlier decision but is looking at all the evidence presented. At paragraph 74 the judge referred to the documentary evidence.

26. I find that First-tier Tribunal Judge Davies correctly use the earlier decision in his evaluation. The evidence does not indicate he simply adapted that conclusion. Rather, the judge looked at all of the evidence in the round before reaching a conclusion. There was ample evidence before the judge to reach that conclusion. Based upon this primary finding then the remainder of the claim really fell away. I find the judge gave more than adequate reasons behind his conclusion. In summary, I find no material error of law demonstrated.

Decision

No material error of law has been shown in the decision of First-tier Tribunal Judge Davies. Consequently, that decision dismissing the appellant's appeal shall stand

Deputy Upper Tribunal Judge Farrelly
Dated 27th May 2019