Upper Tribunal
(Immigration and Asylum Chamber) HU/04385/2019 (V)

THE IMMIGRATION ACTS

Heard at George House, Edinburgh
by *Skype for Business*
On 5 August 2020

Decisions & Reasons Promulgated
On 13 August 2020

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

ANUM ASHRAF

Appellant

and

ENTRY CLEARANCE OFFICER

Respondent

For the Appellant: Mr B Price, of Latta & Co, Solicitors
For the Respondent: Mrs H Aboni, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. This determination is to be read with:
   (i) The respondent's decision dated 27 February 2019.
   (ii) The appellant's grounds of appeal to the First-tier Tribunal.
   (iii) The decision of FtT Judge Handley, promulgated on 18 February 2020.
   (iv) The appellant's grounds of appeal to the UT, stated in the application for permission to appeal filed on 16 March 2020.

(v) The grant of permission by the FtT, dated 1 May 2020.

2. I conducted the hearing from George House. Representatives attended remotely. No member of the public attended, either in person or remotely. No significant technical issues were encountered. The technology enabled a full and fair hearing. Having heard submissions, I reserved my decision.

3. Ground 1 is that the FtT failed to apply *Goudey* [2012] UKUT 00041 and *Naz* [2012] UKUT 00040, copies of which were among the appellant's documents, which required him to start from the point that where there was a legally recognised marriage and parties wished to live together, little else was required to prove a genuine and subsisting relationship; and that even if the witness evidence was confused, that was not necessarily enough to find the relationship not genuine and subsisting.

4. Mr Price said that the judge went wrong by not stating or applying those principles, but beginning his consideration at [18] by finding the appellant's evidence unclear and inconsistent.

5. There is no requirement to recite case law. This matter can be resolved only by looking at the strength of the reasons given for dismissing the appeal: should the evidence have been taken as providing the "little else" required, and were the adverse findings based on more than mere confusion?

6. Mr Price took grounds 2 and 3 together, based on errors of artificially separating out part of the evidence, noting only negative aspects, and ignoring the positives. Mr Price accepted that the judge did not have to recite all the evidence, but submitted that the decision focused unduly on the negatives, without balancing those against evidence tending the other way.

7. This point also can only be answered by looking at the specific reasoning in the decision; and I was not referred to anything strikingly positive which the judge failed to mention.

8. Mr Price ran grounds 4 and 5 together. These submit that it was unfair to found on the appellant not knowing the sponsor's city of birth, when that was not raised at any stage for the respondent; and unfair to found upon the sponsor making few visits to the appellant, for like reasons, and because it failed to take account of the period of almost a year when the respondent withheld his passport.

9. Summing up, Mr Price said there were errors which together required a remit to the FtT. When replying to Mrs Aboni, he said that the points in grounds 4 and 5 were not, as she had suggested, among the reasons in the ECO's decision.

10. The judge was entitled to consider the evidence before him, and to take the point in ground 4. Fairness did not require him to invite further evidence and submissions. In any event, the appellant has not suggested that there is anything else to be said on the matter.

11. Ground 5 is well taken. There was at least a partial answer to the judge's finding, perhaps not easily locatable among the papers before him, but it was there; if the matter had been put, the sponsor had a sensible response.

12. I turn then to consider which parts of the specific reasoning survive scrutiny, by reference to the "starting point" suggested by the case law.

13. At [18] the judge says that he found aspects of the sponsor's evidence unclear and inconsistent. He had the unique advantage of appraising that evidence directly, and he went on to explain why.

14. At [19], the judge thought the appellant would have known the year and the place of the sponsor's birth (if the relationship was genuine and subsisting). That would not be much of a justification for dismissing the appeal, but it is a finding within reason, not said to be conclusive, which must be viewed in context.

15. At [20] the judge found a discrepancy damaging to credibility: the appellant said that she and the sponsor were cousins, but he said they were unrelated. The explanation that the sponsor did not understand the question was rightly found to be lame. It is hard to see how this could arise from parties to a genuine and subsisting relationship giving honest answers, so this is a strong reason.

16. At [21], the judge founded on the appellant not knowing the company the sponsor worked for, his job, his employment history, and his musical tastes; and on the sponsor not knowing that the appellant played sports. Those are all observations within reason, of the same nature as at [19].

17. At [22] the judge founded upon the sponsor giving a very different account about a girlfriend to the tribunal from the account noted by a solicitor appointed by the court to prepare a report in proceedings in which the sponsor was involved. The judge did not accept that the solicitor would have failed accurately to record what he said. The judge found this to "cast further doubts on the credibility and reliability of the sponsor's evidence". His grounds of appeal do not, and could not, challenge that finding. The court proceedings did not go to the substantive issues before the tribunal, but the general credibility and reliability of the sponsor were pertinent.

18. Some reasons given by the judge are much stronger than others; that is usual. Only one of the reasons is directly undermined (ground 5).

19. Taking the reasons together, the judge was entitled to find that the evidence, as a whole, did not amount to the "little else" required to prove a genuine and subsisting relationship; that does not require the negatives to be overlooked. The witness evidence was not merely confused, it gave the judge good cause to think that the underlying reality was not as portrayed.

20. The decision of the First-tier Tribunal shall stand.

21. No anonymity direction has been requested or made.

7 August 2020
UT Judge Macleman

NOTIFICATION OF APPEAL RIGHTS

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within the **appropriate period** after this decision was **sent** to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent:

2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically).**

3. Where the person making the application is in detention under the Immigration Acts**, the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically)**.

4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days (10 working days, if the notice of decision is sent electronically).**

5. A "working day" means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.

6. The date when the decision is "sent' is that appearing on the covering letter or covering email.