



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: EA/05721/2020

THE IMMIGRATION ACTS

Heard at Field House
via Microsoft Teams
On 1 February 2022

Decision & Reasons Promulgated
On the 28 February 2022

Before:

UPPER TRIBUNAL JUDGE GILL

Between

**Kuldip Singh
(ANONYMITY ORDER NOT MADE)**

Appellant

And

The Secretary of State for the Home Department

Respondent

Representation:

For the Appellant: No appearance.

For the Respondent: Ms Z Young, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant, a national of India born on 2 July 1988, appeals against a decision of Judge of the First-tier Tribunal Abdar (hereafter the “judge”) promulgated on 24 June 2021 by which the judge dismissed his appeal under the Immigration (European Economic Area) Regulations 2016 against a decision of the respondent of 9 November 2020 which refused his application of 1 October 2020 for a residence card as a family member of an EEA national, Ms Iren Szendrei, a Hungarian national (hereafter the “sponsor”) said to be exercising Treaty rights in the United Kingdom. The appellant’s case was that he and the sponsor were married. The marriage had taken place in India by proxy on 18 February 2020 and registered in India on 20 February 2020. The respondent was not satisfied that the appellant’s marriage was valid. The respondent considered that, according to “*Home Office information*”, India does not recognise proxy marriages and that a Hindu marriage ceremony cannot be take place by proxy.
2. On the hearing day, the appellant did not join the hearing via Microsoft Teams, nor did any representative acting on his behalf, at 12 noon or by 12.33 hrs. I was satisfied

that the Notice of Hearing dated 11 January 2022 (form IA113) had been duly served on the appellant on his last-notified address. This was the address he gave in his application (hereafter the "PTA application") to the Upper Tribunal for permission to appeal which he (incorrectly) completed using the form IAFT-4, instead of the IAUT-1. The completed form is dated 24 June 2021.

3. I was therefore satisfied that rule 38(a) of the Tribunal Procedure (Upper Tribunal) Rules 2008 (the "UT Rules") was satisfied.
4. On the hearing day, the court clerk telephoned the appellant three times using the telephone number on the Home Office file, which was provided to her by Ms Young. On each occasion, the call went straight to voicemail. I was informed that no messages had been left at the reception desk for this case.
5. In the circumstances, I had no explanation for the non-attendance. I had no reason to think that, if the hearing was adjourned, the appellant would or might attend the hearing.
6. I took into account the overriding objective.
7. In my preparation for this case on the day before the hearing, I noted that para 13 of the grounds quoted from a document which was at page 10 of the bundle attached to the PTA application (hereafter the "PTA bundle") but which was not in the appellant's 50-page bundle of documents that was before the judge (hereafter the "Appeal Bundle"). In order to save time at the hearing in view of the fact that the hearing was due to take place via Microsoft Teams, I instructed the administrative staff of the Upper Tribunal to email the parties in the following terms and to attach to the email the PTA bundle and the Appeal Bundle:

"Dear Parties,

This appeal is listed to be heard tomorrow at 12 p.m. via Microsoft Teams. The Upper Tribunal will be referring to the following bundles which are attached to this email:

1. The appellant's 50-page bundle that was submitted to the FtT. This was received by the FtT on 17 Nov 2020 and it was therefore before Judge of the First-tier Tribunal.
2. The appellant's application to the FtT for permission to appeal.

The parties will note that the document quoted at para 13 of the grounds is included in bundle 2 but not in bundle 1. The Upper Tribunal will therefore require evidence from the appellant to establish that this document was submitted to the FtT before the judge made his decision."

8. The email was sent to the parties on 31 January 2022 at 15:13 hrs. Accordingly, the appellant would also have received an email that would have reminded him of the hearing on 1 February 2022. If he had not received the Notice of Hearing, it is reasonable to expect him (upon receiving the email of 31 January 2022) to have contacted the Upper Tribunal to inform the Tribunal of that fact and request an adjournment. Nothing was heard from him.
9. In all of the circumstances and taking everything into account, I was satisfied that it was in the interests of justice to proceed with the hearing. I therefore proceeded with the hearing in the absence of the appellant and any representation on his behalf, pursuant to rule 38 of the UT Rules.

The judge's decision and the grounds

10. The appellant requested the First-tier Tribunal to decide his appeal on the papers. Accordingly, the judge decided the appeal on the documentary evidence submitted. It is clear from para 6 of the judge's decision (quoted below) that the documentary evidence before him comprised of the respondent's statutory appeal bundle and the appellant's Appeal Bundle. This also accords with my examination of the file.
11. The judge concluded that he was not satisfied that the appellant's marriage was conducted according to the laws of India and that the marriage was recognised by India. He was therefore not satisfied that the appellant and the sponsor were married as claimed. He gave his reasons at paras 6 to 12 which read (my emboldening):

“Analysis and findings

6. The appeal before me is on the papers only and I have taken a holistic approach. I make my findings having considered all of the evidence up to the date of my decision and on the balance of probabilities. **The papers that I have before me are the Appellant's bundle of 50 pages and the Respondent's bundle of 53 pages.**
7. The determinative issue before the Tribunal is whether or not the Appellant is a family member of the Sponsor, namely whether they are married. As detailed at [3], the Respondent does not recognise the marriage as the Respondent states that the marriage is not recognised by India. In paragraph 20 of the grounds of appeal, the Appellant states that the 'Respondent state that India do not recognize proxy marriage but it's not India to recognise the proxy marriage but for the United Kingdom law and proxy marriage is recognized in the United Kingdom [sic]'. Yet, with reference to *Acouku v Secretary of State for the Home Department* [2017] EWCA Civ 178, at paragraph 26 of the grounds, the Appellant, rightly, states that 'in English law the formal validity of marriage is governed by the law of the country where the marriage was celebrated, i.e. in this case India'.
8. The Sponsor's evidence, in the witness statement at page 25 of the Appellant's bundle, is in line with the grounds of appeal and refers to evidence of the Sponsor working in the UK. It is convenient at this stage to clarify that I do not consider the Respondent to have refused the application on the grounds of the Sponsor not being a 'qualified' person.
9. **A copy of the marriage certificate is also in the bundle and a statement from a Jagmohan Singh, Civil Registrar, Mohali, dated 20 February 2020, confirming that the Appellant and the Sponsor's marriage of 18 February 2020 was entered into the Registry on 20 February 2020. Additionally, at page 42, a 'Schedule Form See Rule - 10, details of marriage registration' is included and that document is not signed by the Appellant or the Sponsor and does not provide any details of their proxy, albeit it is signed by two witnesses, in India. On the marriage, there is also an affidavit of a Karan Singh, dated 20 February 2020, attesting to the Appellant and the Sponsor's marriage on 18 February and registration of the same on 20 February 2020.**
10. As the Appellant accepts at paragraph 29 of the grounds of appeal, the burden of proof is on the Appellant, on the balance of probabilities, to prove that their proxy marriage was in accordance with the laws of the country in which it took place, namely India, for the marriage to be recognised under the laws of England and Wales.
11. **However, I have no evidence to confirm that Indian law permits marriage by proxy; the Respondent states that India does not though the Respondent has not provided any evidence either. There is also no evidence before me of the requirements, if any, for such a marriage to be recognised by India. I also note that the Appellant nor the Sponsor appointed a proxy for their marriage and it is difficult to discern what the two named witnesses witnessed.**
12. On the evidence before me, I am not satisfied that the marriage was conducted as per the laws of India and that the marriage is recognised by India. Accordingly, I am not satisfied that

the Appellant and the Sponsor are married as claimed and the Appellant does not meet the requirements of Regulation 7 of the EEA Regulations. Therefore, the appeal falls to be dismissed.”

12. The grounds of appeal contend that the judge had erred in law by failing to consider two letters from the Registrar of Marriages confirming that a proxy marriage is valid in Punjab, India, and that the appellant’s marriage to the sponsor was properly performed and registered according to the requirements of the law in India. The grounds contend that the appellant had therefore submitted sufficient evidence to establish that his proxy marriage was legal and valid in India. It is further contended (para 11 of the grounds) that the judge did not appear to give reasons as to why the marriage certificate, memorandum of marriage, affidavit of the head of the village and the confirmation letter from the Registrar of Marriages confirming that the proxy marriage was valid in Punjab and had been properly performed and registered according to the requirements of the law in India were insufficient.
13. It is necessary to quote para 13 of grounds which reads (emphasis in the grounds):

“The first letter 20/02/2020 on the day of the registration of the marriage and the second letter 20/01/2021 letter state that:

I, the Registrar of Hindu Marriage of S.A.S. Nagar, Mohali, Punjab, India, certify that proxy marriage is valid in Punjab, India.

I, further, confirm the marriage of Sri Kuldip Singh bom on 02/07/1988 of Indian national to Irene Szendrei born on 27/10/1985 of Hungarian national, residents of London, U.K., was properly performed and registered according to the requirements of the law in India.

The marriage was solemnized on 18th of February two thousand twenty and registered on 20th February two thousand twenty in the Office of the Civil Registrar of Marriages, S. A. S. Nagar, Registrar of Mohali, Punjab, India.

I certified that the above which contains entries from No. 1 to 4 regarding Bridegroom and No. 1 to 6 regarding Bridegroom and Bride is true extract of all entries in the Hindu Marriage Register as per the marriage certificate. It is further certified that the Marriage of the above Bridegroom & bride has been registered by the undersigned.

Enclose [sic] the followings [sic] which were before the judge and acknowledged in paragraph 4 of the decision.

- (i) Affidavit of the head of village confirming the marriage
- (ii) **Letter from the Registrar of marriages confirming that proxy marriage is valid in Punjab, India and the marriage was properly performed and registered according to the law in India.**
- (iii) Marriage certificate.”

14. Judge of the First-tier Tribunal Saffer granted permission stating: “*It is arguable that the judge may have had evidence of the validity of the marriage before him*”.

Assessment

15. As I have said at para 10 above, the documentary evidence before the judge comprised of the respondent’s statutory appeal bundle and the appellant’s Appeal Bundle. This bundle did not include the document that is quoted at para 13 of the grounds and which was at digital page 10 of the PTA bundle as I said in the email that was sent to the parties on 31 January 2022. The appellant did not attend the hearing and did not submit any evidence to establish that this document was submitted to the judge before he made his decision.

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16. I am therefore not satisfied that the document quoted at para 13 of the grounds was before the judge. It follows that it cannot be relied upon in order to establish that the judge erred in law.
17. In any event, even if this document had been before the judge, he did not materially err in law for the following reasons:
18. Head-notes 1 and 2 of Cudjoe (Proxy marriages: burden of proof) [2016] UKUT 00180 (IAC) read:
- “1. It will be for an appellant to prove that their proxy marriage was in accordance with the laws of the country in which it took place, and that both parties were free to marry. The burden of proof may be discharged by production of a marriage certificate issued by a competent authority of the country in which the marriage took place, and reliance upon the statutory presumption of validity consequent to such production. The reliability of marriage certificates and issuance by a competent authority are matters for an appellant to prove.
 2. The means of proving that a proxy marriage was contracted according to the laws of the country in which it took place is not limited to the production of a marriage certificate, as is recognised in Kareem (Proxy marriages – EU law) [2014] UKUT 00024 (IAC).”
19. It is therefore clear that the mere production of a marriage certificate is not sufficient to prove that the marriage is valid under the laws of the relevant country. This applies to all of the documents that were before the judge, which he described at para 9 of his decision. If the document at page 10 of the appellant's Appeal Bundle was before the judge, it would have applied to that document as well.
20. It was for the appellant to prove that any documents he relied upon in support of his case that his proxy marriage was valid and had complied with all relevant requirements under the law of the Punjab were reliable as to their contents.
21. The documents described by the judge at para 9 of his decision (which were at pages 41-45 of the appellant's Appeal Bundle) were not sufficient to prove that the appellant's proxy marriage was valid. Nor was the document at page 10 of the appellant's PTA Bundle sufficient. The reliability of the contents of the document at page 10 of the PTA Bundle cannot be assured, in that, the mere fact that it bears a stamp and was ostensibly issued by “... *Registrar of Hindu Marriage of S.A.S. Nagar, Mohali, Punjab, India...*” does not mean that it was in fact issued by a competent authority and/or that its contents are reliable. The same rationale applies in relation to the other documents, described at para 9 of the judge's decision.
22. In addition, the judge's observation in the final sentence of para 11 of his decision, i.e. that there was nothing that established that the appellant and the sponsor had in fact appointed proxies (I observed that none of the documents before the judge specified the names of any proxies), cast doubt on the reliability of *all* of the documents that the appellant relied upon before him to show that his marriage was valid.
23. There was no objective evidence at all before the judge that confirmed that Indian law or the law of the Punjab permits marriage by proxy or that established the requirements, if any, that have to be complied with in order for such marriages to be recognised in India, as the judge said at para 11 of his decision. If such evidence had been submitted to the judge, it could have had an important bearing in deciding whether the contents of the marriage certificate, registration certificate etc were reliable.

24. For all of the reasons given above, the judge did not err in law in reaching his conclusion that the appellant had not shown that his marriage to the sponsor was valid under the laws of India.

Decision

The making of the decision of the First-tier Tribunal did not involve the making of any error of law sufficient to require it to be set aside. Accordingly, the appellant's appeal to the Upper Tribunal is dismissed.

Signed
Upper Tribunal Judge Gill

Date: 2 February 2022

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