Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: UI-2021-001167
IA/00166/2021

THE IMMIGRATION ACTS

Heard at Field House
On 27 June 2022

Decision & Reasons Promulgated
On 22 August 2022

Before

UPPER TRIBUNAL JUDGE NORTON-TAYLOR

Between

MR BISHNU DEV GOSWAMI
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr N Sadeghi, Counsel, instructed by JML Solicitors
For the Respondent: Ms A Ahmed, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. The Appellant appeals with permission against the decision of First-tier Tribunal Judge Aldridge ("the judge"), dated 27 July 2021. By that decision the judge dismissed the Appellant's appeal against the Respondent's refusal of his application for a residence card as the durable partner of an EEA national (Ms D Floarea, "the Sponsor").

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2. The Appellant is a citizen of India, born in 1965. The application for the residence card was made on 16 January 2020 and the refusal was issued on 3 December of that year. In essence, the Respondent concluded that the Appellant was not in a durable relationship with the Sponsor.

The decision of the First-tier Tribunal

3. Unfortunately the paragraph numbering of the judge’s decision has gone awry and restarts at “1” on three separate occasions. In light of this and in order to avoid confusion, I will not refer to specific paragraph numbers in my decision.

4. Unusually, the Sponsor gave her evidence before the Appellant (I understand that this was at the Appellant’s request; the Sponsor had apparently come from a nightshift and wanted to give her evidence as soon as possible). During the course of cross-examination the Sponsor revealed that she had rented another property in the United Kingdom on behalf of her sister. This arrangement had continued for approximately 14 months. In cross-examination of the Appellant the Presenting Officer had asked him whether he was aware of this arrangement, to which the Appellant had said that he was not. Nor was he aware that the Sponsor had rented any other property in this country.

5. The issue of the Sponsor’s sister, and in particular the Appellant’s ignorance of her presence in this country and the renting of the flat on her behalf, was relied on heavily in the Respondent’s closing submissions to the judge. In turn, the judge placed very considerable weight upon the point as an adverse consideration. Having first deemed the Sponsor’s evidence to be significantly damaged by her own evidence in respect of the rented flat (she had originally stated that this had not taken place at all, only subsequently to have accepted that it had), the judge found that it was “inconceivable” that the Appellant had no knowledge of the arrangement, if indeed his relationship with the Sponsor was genuine, as claimed.

6. In addition, the judge found that the gap in knowledge was exacerbated by the Appellant’s ignorance of the money paid by the Sponsor to the landlord in respect of the rented property. An important passage in the judge’s decision reads as follows:

> “I acknowledge that the appellant has exhibited numerous documents that appear to show cohabitation in respect of tenancy agreements, television licence and joint bank statements etc. However, I do not find that they are documents that demonstrate a committed and durable relationship and do not tip the balance in favour of the appellant when considering the evidence in the whole and against the failure to demonstrate an intimacy of relationship in respect of the knowledge regarding the sponsor’s sister.”

7. The judge went on to regard limited photographic evidence as being weak in light of the absence of any explanation as to when and where they were taken. Following on from this, the judge stated his finding that the Appellant and Sponsor were not living together or otherwise in a durable relationship, that an accurate and credible presentation of the relationship had not been provided, and that there had not been any plausible explanations for discrepancies in the evidence. The judge confirmed that he had considered the evidence "in the round" and on its "totality", and that there had been evidence pointing in the Appellant's favour. However, as a whole, the Appellant had failed to discharge the burden resting upon him.

The grounds of appeal

8. Two grounds of appeal were put forward, drafted by Mr Sadeghi (who had not appeared below). The first was founded on an alleged procedural unfairness, namely the failure to have asked the Sponsor about whether she had in fact informed the Appellant about her sister's presence in the United Kingdom and/or, if she had not, why not. The second ground relied expressly on alleged irrationality. It was said that in light of the voluminous documentary evidence it was not open to the judge to have rejected all of it simply because of the ignorance of the Sponsor's sister circumstances in the United Kingdom.

9. Permission was granted on both grounds.

The hearing

10. Both representatives made concise oral submissions, which are a matter of record. Mr Sadeghi relied on the grounds. In the context of this case the judge had acted unfairly. In respect of the second ground of appeal it was accepted that not each and every item of evidence had to be referred to, but more was required, given its nature and the apparently single adverse credibility point taken against the Appellant.

11. Ms Ahmed relied on the Respondent's rule 24 response. She submitted that the onus had been on the Appellant to prove his case and that the Presenting Officer could not have been expected to go on a fishing exercise which could potentially have involved never-ending cross-examination in order to cover each possible point arising in oral evidence. The Appellant's challenge involved speculation.

12. At the end of the hearing I reserved my decision.

Conclusions on error of law

13. I remind myself of the need for appropriate restraint before interfering with the decision of the First-tier Tribunal: see, for example, Lowe [2021] EWCA Civ 62, at paragraphs 29-31, AA (Nigeria) [2020] EWCA Civ 1296; [2020] 4 WLR 145, at paragraph 41, and UT (Sri Lanka) [2019] EWCA Civ 1095, paragraph 19 of which states as follows:

> “19. I start with two preliminary observations about the nature of, and approach to, an appeal to the UT. First, the right of appeal to the UT is "on any point of law arising from a decision made by the [FTT] other than an excluded decision": Tribunals, Courts and Enforcement Act 2007 ("the 2007 Act"), section 11(1) and (2). If the UT finds an error of law, the UT may set aside the decision of the FTT and remake the decision: section 12(1) and (2) of the 2007 Act. If there is no error of law in the FTT's decision, the decision will stand. Secondly, although "error of law" is widely defined, it is not the case that the UT is entitled to remake the decision of the FTT simply because it does not agree with it, or because it thinks it can produce a better one. Thus, the reasons given for considering there to be an error of law really matter. Baroness Hale put it in this way in AH (Sudan) v Secretary of State for the Home Department at [30]:
>
> > "Appellate courts should not rush to find such misdirections simply because they might have reached a different conclusion on the facts or expressed themselves differently."

14. Following from this, I bear in mind the uncontroversial propositions that the judge’s decision must be read sensibly and holistically and that I am neither requiring every aspect of the evidence to have been addressed, nor that there be reasons for reasons.

15. In respect of allegations of procedural unfairness, I remind myself that what is required in any given case will be context-specific.

Ground 1

16. After careful reflection I have concluded that, on the basis of the materials before me, the judge did not act with procedural unfairness. My reasons for this conclusion are as follows.

17. It was somewhat unusual for the Sponsor to have given evidence before the Appellant. However, there was nothing erroneous about proceeding in that way, particularly as it was at the request of the Appellant. It is clear that a significant matter, previously undisclosed, arose during the course of the cross-examination of the Sponsor, namely (a) the fact that her sister had resided in this country for at least 14 months and (b) that the Sponsor had rented a flat for the sister during most or all of that period.

18. At that stage neither the Presenting Officer or the judge could have known what the Appellant knew or did not know about this state of affairs. There is nothing before me to indicate that the Sponsor was re-examined by Counsel about the particular issue, including whether or not she had

informed the Appellant of the arrangement. In my view, that was an avenue which was reasonably open to pursuit on the Appellant's behalf.

19. It might have been better if the Presenting Officer had, for example, asked the question, "Did you tell the Appellant about this?", but that is with the benefit of hindsight: at the time, it would have been an entirely speculative question. I conclude that the apparent failure to have asked the Sponsor specifically about the Appellant's knowledge did not of itself render the whole of the judge's credibility assessment unfair. In the context of this case, it was not incumbent on him to have entered the arena (or at least to have appeared to have done so) by asking questions either on behalf of the Appellant or the Respondent.

20. It is, in my judgment, also important to note that the judge deemed the Sponsor's evidence to be significantly damaged by inconsistencies within her own evidence about properties which were clearly relevant to his assessment of the evidence as a whole. That aspect of the assessment has not been challenged in the grounds of appeal.

21. The term "inconceivable" employed by the judge to describe the lacuna in the Appellant's knowledge about the Sponsor's sister is a strong one and caused me some pause for thought before reaching the conclusion that I have. Having said that, it must be placed in context. That context included the poor state of the Sponsor's evidence generally (I refer back to the previous paragraph) and the Appellant's own accepted ignorance not only of the fact that the Sponsor's sister had resided in the United Kingdom for over a year, but also his unawareness that money (seemingly from the joint financial pot, as it were) had been paid to the landlord of the other property. The judge had to do the best he could on what was before him. He could have alluded to the fact that the Sponsor was not specifically asked in cross-examination (or apparently in any re-examination) about whether the Appellant knew of the arrangement with her sister, yet his failure to do so does not, in my judgment, render his assessment procedurally unfair in a material way.

22. In truth, this was a situation in which significantly problematic evidence came out during the course of the hearing (it not having been addressed in writing beforehand, as it should have been if a full picture of the factual situation was being presented) and it was rationally open to the judge to place very significant weight on the lacuna in the Appellant's knowledge. Even on the hypothetical scenario that the Sponsor had been asked if she had told the Appellant, there would effectively have only been one of two possible answers: either the Sponsor would have said "yes, I did tell him"; or she would have said "no, I did not tell him". In respect of the former, there would plainly have been a stark inconsistency in the evidence. In respect of the latter, there would still have been a significant evidential issue in respect of the parties' mutual commitment to the claimed relationship. The judge was entitled to view the issue from the perspective of whether the Appellant and Sponsor were genuinely committed to each other, and the absence of knowledge on an important

matter, whether because the Sponsor thought it unnecessary to inform the Appellant, or because the Appellant deemed it to be unimportant, was a consideration to which he was entitled to attach significant weight. In short, it was open to the judge to rely on the issue of commitment, as he did in several passages within his decision, and the use of the term "inconceivable" was, when seen in context, not indicative of an error of law.

23. In light of the foregoing the Appellant's first ground of appeal fails.

Ground 2

24. I had initially harboured a concern about whether the judge should have dealt in greater detail with the documentary evidence, much of which potentially favoured the Appellant in terms of cohabitation and, by way of inference, the existence of a genuine durable relationship. I remind myself once again that a judge need not address all aspects of the evidence, provided it is sufficiently clear that relevant materials have been considered as part of the analysis. In the present case the judge did refer to the two bundles adduced by the Appellant and he subsequently acknowledged the provision of "numerous documents". There was a proper acknowledgement that there was evidence which pointed in a "different way" (i.e. in the Appellant's favour). There was also express confirmation that the judge had considered the evidence "in the round" and "on the totality".

25. In relation to the photographs provided, the judge was clearly entitled to place little or no weight on them given the absence of any basic information provided by the Appellant.

26. Ideally, a more detailed analysis of the other documentary evidence might have taken place, but the fact that it did not does not fails to demonstrate an error of law. I am satisfied that the judge did indeed have regard to the evidence as a whole, as he said he did. Given his sustainable adverse findings in respect of the oral evidence of both the Appellant and the Sponsor, the judge was rationally entitled to conclude that the supportive documentary evidence was outweighed by the negative aspects in the case.

27. For these reasons, the second ground of appeal also fails.

Notice of Decision

The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.

The appeal to the Upper Tribunal is accordingly dismissed.

Signed H Norton-Taylor Date: 1 July 2022

Upper Tribunal Judge Norton-Taylor