



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM
CHAMBER

Case No: UI-2023-001483
First Tier No:
EA/05195/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 12 August 2023

Before

UPPER TRIBUNAL JUDGE SMITH
DEPUTY UPPER TRIBUNAL JUDGE FARRELLY

Between

MR MUNEEB AZHAR

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M Iqbal, Counsel instructed by Goodfellows Solicitors
For the Respondent: Mr C Avery, Senior Home Office Presenting Officer

Heard at Field House on Thursday 13 July 2023

DECISION AND REASONS

Introduction

1. The appellant is a national of Pakistan. On 2 January 2022 he applied for entry clearance under the EU settlement scheme on the basis he was joining his wife, a German national originally from Pakistan. We refer to her hereinafter as 'the sponsor.'
2. As part of his application he submitted their marriage certificate. This document indicated they were both present at a marriage ceremony in

Pakistan on 16 February 2019. The marriage was registered on 24 November 2021.

3. His application was refused on 20 May 2022. The respondent was not satisfied he was a family member of his sponsor, namely, her spouse. The respondent did not place reliance upon the marriage certificate. The length of time between the claimed marriage and the date of registration was commented upon. The refusal referred to an absence of an explanation for the delay or other relevant documentation or evidence of the claimed relationship.

The First tier Tribunal

4. His appeal was heard by First-tier Tribunal Judge Chana on 27 January 2023. The appellant was represented by Counsel and there was a presenting officer. The decision, promulgated on 15 February 2023, dismissed his appeal.
5. The appeal made on behalf of the appellant was that notwithstanding the late registration the marriage under the law of Pakistan was valid. The appellant's representatives had obtained a report from a lawyer in Pakistan, a Mr Ahmad . He has been described as an expert by the appellant's representatives albeit FT Judge Chana found no evidence that he was an expert .For convenience however, we will continue to refer to him as 'the expert '.
6. The expert referred to a Muslim Family law Ordinance of 1961. Section 5 requires that every marriage shall be registered. Failure to do so could result in imprisonment for three months or a financial penalty. The ordinance makes provision for the registration and provision of copies to the parties. The expert states that in many cases marriages are registered late.
7. The judge considered the evidence, commented in detail on the report from the expert, and agreed with the respondent the appellant had not demonstrated he was a family member of the sponsor.
8. The judge found the expert had not referred to any background evidence as to his claim that marriages are frequently registered late. The judge did not accept as credible the explanation for the delay given, namely, that the appellant had been doing a course of study and did not think there was any hurry to register. The judge said there was no account of what evidence was submitted to enable late registration.
9. Furthermore, the expert did not refer to or seek to explain apparent anomalies in the Nikkah Nama such as why, of the 14 questions asked, only the address and the dowry are referred to .

10. The sponsor's address was given as being in Pakistan and not the United Kingdom and there was no reference to any address in Germany. The sponsor was described as being divorced and for the part relating to the number of children, question 5A, 'nil' was stated. However, the sponsor's evidence was that she could not visit the appellant more often because she had two children to look after.
11. The judge found she had not been told the whole truth about the relationship, commenting on discrepancies in the evidence as to when it began and whether or not they were related. The judge also referred to the fact the sponsor had only been back to Pakistan since for a visit in October 2021.

The Upper Tribunal

12. Permission to appeal to the Upper Tribunal was refused by FTT Judge Barker. The judge was of the view that the grounds advanced amount to no more than a disagreement with the judge's findings. FTT Judge Barker concluded that the judge was entitled to find the evidence of marriage was not reliable, particularly given inconsistencies between the oral evidence and the documentary evidence and the contradictions within the certificate, including the existence of the sponsor's children. FTT Judge Barker also was of the view the judge was entitled to find the evidence from the expert was not worthy of weight given the issues identified at paragraph 14 of the decision.
13. On a renewed application on the same grounds UT Judge Sheridan granted permission on 6 June 2023. This was on the basis it was arguable First Tier Judge Chana fell into error at paras 16 to 18 of her decision by analysing for herself a foreign legal provision rather than limiting the assessment to a consideration of the report from the expert. The ground referred to the Upper Tribunal decision of Hussein [2020] UKUT 00240. It made the point that foreign law is a matter of fact and must be proved, normally by expert evidence.
14. A rule 24 response dated 21 June 2023 was provided by the respondent. It stated that there was no error of law. The judge was not satisfied the expert was qualified to comment on the issue nor had there been regard to protocols in relation to expert reports. Furthermore, the expert had not addressed various anomalies arising.
15. Mr Iqbal, Counsel for the appellant, argued that notwithstanding the late registration of the marriage it was nevertheless valid. He referred to evidence in support of the marriage, such as wedding photographs and the sponsor's trip to Pakistan and remittances sent after the marriage.

16. We referred Mr Iqbar back to the terms of the grant of permission. The issue arising was not whether a marriage registered late in Pakistan was valid. Rather, it was whether the judge had erred by taking upon herself an assessment of Pakistani law and marriage registration rather than limiting her enquiry to an assessment of the expert evidence provided. The grant of permission did not go beyond that.
17. Mr Avery, in response submitted that from the respondent's decision it was clear that the issue arising was whether the appellant and sponsor were genuinely married. The burden of proof in this regard is upon them. He continued to support the judge's dismissal. Regarding the expert report he pointed out that the Istanbul protocol had not been referred to in the report.
18. In reply, Mr Iqbar submitted that the sponsor had innocently used a local address in completing the form. He submitted that this and the failure to refer to her two children did not result in the marriage being invalid.
19. Both parties were in agreement that if we found an error of law the matter should be remitted to the first-tier Tribunal for a rehearing de novo.

Discussion

20. The appeal comes before us to determine whether the Decision contains errors of law. If we conclude that it does, we then have to decide whether to set aside the Decision in consequence of those errors. If we set aside the Decision, we then have to go on to either re-make the decision or remit the appeal to the First-tier Tribunal.
21. We had the core documents relevant to the challenge to the Decision as well as the hearing bundles before the First-tier Tribunal which include the evidence and skeleton argument put forward by the Appellant and the Respondent's bundle.
22. When the impugned paragraphs 16 to 18 of First-tier Tribunal Judge Chana's decision are read with the preceding paragraph and the report from the expert it is apparent that the Judge was not attempting to interpret a foreign legal provision as a legal expert. Paragraph 16 simply replicates extracts from section 5 of the registration of marriage Muslim family Law's ordinance 1961 contained at paragraph 12 of the expert report. The same rationale applies to paragraph 17. The only comment she makes is that the statutory provision requires the reporting of the marriage to the registrar, which is what it says, with the sanction of a fine

or imprisonment . The same applies in respect of paragraph 18 of her determination. She was not attempting to interpret a complicated legal provision or the laws relating to marriage in Pakistan. She is simply summarising the section from the legislation quoted. We find no error of law in her doing this.

23. Mr Iqbar sought to argue that the late registration of a marriage in Pakistan does not render it invalid. With respect, he appears to be missing the point upon which leave was granted. The grant of permission related to whether the judge had taken on the role of a judge of Pakistani matrimonial law. The judge was not doing this but was relaying the law as set out in the expert report. The issue before the judge was not whether the late registration rendered the marriage invalid but it was whether the marriage existed in fact. The judge gave more than adequate reasons at paragraphs 12, 13 and 20-25 for concluding the appellant had not shown he was a family member of his sponsor .

NOTICE OF DECISION

No material error of law has been established. The decision of First-tier Tribunal Judge Chana dismissing the appeal shall stand.

Francis J Farrelly

Deputy Upper Tribunal Judge Farrelly

Judge of the Upper Tribunal
Immigration and Asylum
Chamber

1st August 2023