



Upper Tribunal

(Immigration and Asylum Chamber)

Appeal Number: HU/27307/2016

THE IMMIGRATION ACTS

Heard at Field House

Decision and Reasons Promulgated

On 23rd April 2018

On 26th April 2018

Before

UPPER TRIBUNAL JUDGE RIMINGTON

Between

Mr MD MONIRUL TIPU

(Anonymity Direction Not Made)

Appellant

and

Entry Clearance Officer

Respondent

Representation

For the Appellant: Mrs N Malik, instructed by MR Solicitors.

For the Respondent: Ms A Fijiwala, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a national of Bangladesh born on 14th June 1991 and he applied for leave to enter the United Kingdom on a spousal visa in order to be with his wife who is a British citizen. The Entry Clearance Officer on 21st November 2016 refused the application with reference to Appendix FM of the Immigration Rules on the basis of the following:
 - (i) under the suitability requirements the sponsor had failed to submit a written undertaking to be responsible for the applicant's maintenance and accommodation
 - (ii) it was not accepted that there was a genuine and subsisting relationship because there were discrepancies as to when they first met and there was a lack of evidence of contact since they were married
 - (iii) the applicant failed to satisfy the financial requirements to establish that the sponsor was earning £18,600 a year. The sponsor had failed to provide the required wage slips and personal bank statements.
2. The appellant appealed that refusal and in a determination dated 25th of October 2017 Judge of the First-tier Tribunal Thorne refused the appellant's appeal on all grounds.

Application for Permission to Appeal

3. The application for permission advanced the following grounds:
 - (i) there was a failure to properly consider article 8 of the ECHR. The Secretary of State was duty-bound to consider the impact of the decision-making on the applicant's family including his sister and nieces and nephews. It was clear that the continued separation interfered with their private and family life and breach their rights under article 8
 - (ii) the decision was irrational and made a irrational findings and there was a failure to discharge the burden of proof. The judge had stated that the level of contact had not been established but the marriage certificate was placed in front of the judge and had not been properly considered and the marriage was evidence in itself of the relationship being genuine and subsisting. It was submitted that the judge had failed properly to follow the step-by-step process required to determine whether the relevant burden and standard of proof had been established to prove that there was a marriage of convenience. It was submitted that the tribunal had departed from the well-established principle of that the pendulum only things to the appellant the Secretary of State to satisfy the tribunal that a reasonable suspicion had been made out.
4. Permission to appeal was granted by First-tier Tribunal Judge Chohan who observed that the judge's decision was difficult to follow, large parts of the decision were composed of jurisprudence and the law and

the gist of the findings appeared at paragraphs 60 but there appeared to be a lack of reasoning for the findings made.

5. A Rule 24 response was filed by the Secretary of State on behalf of the entry clearance officer which argued that the judge directed himself appropriately and he found that there was little evidence to indicate that the marriage was genuine and subsisting and that the judge was entitled to make this finding on the evidence before the tribunal. The judge applied the correct burden and standard of proof.

The Hearing

6. At the hearing, Mrs Malik submitted that article 8 was not considered properly and was vital. She relied on the written grounds of appeal. She accepted that the photographs had been placed before the entry clearance officer.
7. Miss Fijiwala submitted that there was no material error of law. The judge had addressed the issues and his findings were clear at paragraphs 26 to 32. Essentially the appellant had not met the suitability requirements and at paragraph 24 the judge noted that the sponsor was too embarrassed to submit evidence of contact between the appellant and herself. There was a finding that the rules under FM-SE the appendix FM were not met. The decision was given in the alternative. First the judge did not accept that there was a relationship such that a proportionality assessment needed to be undertaken but the judge nevertheless went on to consider article 8 and his findings were sufficient.
8. I was directed to paragraph 61 of the judge's decision. Overall the rules had not been met and it was open to the judge as to the weight to be accorded to the evidence. I was referred to specifically to paragraph 60 (f) and (e) where the judge found he was not satisfied that the financial requirements have been satisfied and further that there was inadequate evidence that suitable accommodation was available in the UK. There was a clear lack of evidence of a subsisting relationship since the marriage

Conclusions

9. The grounds are essentially intertwined. From reading the decision it is not arguable that the judge failed to follow the step by step process. Contrary to the grant of permission to appeal, I find that the decision was a not difficult to follow. The judge set out the jurisprudence at length which may have been unnecessary but this demonstrated that the judge directed himself appropriately legally and those legal directions were not challenged. Specifically his findings were at paragraphs 25 onwards. The judge was critical of the appeal on the basis that the

sponsor had still failed to submit a signed and dated written undertaking to be responsible for her husband's maintenance accommodation and that she had still failed to submit adequate evidence of contact between herself and the applicant since they were married. Contrary to the grounds the marriage certificate itself was not disputed and this was before the entry clearance officer who challenged the subsequent contact to evidence the genuine nature of the relationship. A certificate itself does not necessarily take the matter forward. As the judge pointed out, little more was submitted by way of evidence and the judge noted at paragraph 24 that "S was too embarrassed to submit evidence of her communications with A" [since the marriage]. That in effect is an acceptance that no further evidence of communication had been submitted and bearing in mind the criticism within the refusal of the evidence of telephone calls and the limited contact between the appellant and his sponsor and which put the appellant on notice of that which was required regarding contact, the judge was entitled to find that there had been a failure to submit adequate evidence.

10. That finding followed on from a finding on the evidence that the sponsor had still failed to submit a written undertaking to be responsible for the appellant's maintenance and accommodation. That in itself also undermined the contention of a relationship which was subsisting.
11. I was referred to the evidence in the bundle but this did nothing to undermine the findings of the judge as it consisted of photographs which were already before the Entry Clearance Officer, some pay receipt, an un-signed statement (although I accept the sponsor attended the hearing and adopted her statement), a marriage certificate and an unsigned undertaking with respect to financial and accommodation responsibility. There was nothing in the witness statement of the sponsor to demonstrate unjustifiably harsh consequences as a result of the decision. Merely at paragraph 4 the sponsor recorded that she had no promise of employment Bangladesh.
12. Bearing in mind that this was an entry clearance application I fail to see the relevance of the reference to nieces, aunt and sister in the grounds, and if this referred to those in the United Kingdom there was no evidence that the relationship with those relatives gave rise to article 8 protected rights.
13. The judge clearly set out the burden and standard of proof at paragraph 19 and it is evident on reading of the decision overall that the standard of proof applied was that of the balance of probabilities. The judge was correct that the burden of proof rested with the appellant. It was for the appellant show that he had a subsisting relationship with his sponsor. The judge made a finding at paragraph 49 that he did not accept that it

had been established on the balance of probabilities there was an existing family life between the appellant and the sponsor as man and wife. That would negate the requirement for the judge to proceed to the proportionality assessment. Nonetheless the judge did go on to consider proportionality and undertake a balancing exercise and, as he was obliged to do, applied section 117 of the Nationality Immigration and Asylum Act 2002.

14. The reference to “marriage of convenience” suggests that the grounds of appeal have been settled with the EEA regulations in mind and of course this is an entry clearance application and the immigration rules are those which are applicable. Nevertheless the judge did assess whether there was a genuine relationship demonstrated by the appellant and found for cogent reasons that there was not. That finding was adequately reasoned and open to the judge.
15. The judge conducted the proportionality balance having considered the immigration rules, which reflect the position of the Secretary of State, and the judge was entitled to find that there was a legitimate interest in maintaining effective immigration control. The judge was entitled to conclude that the appellant could not be maintained economically in the UK because the sponsor had not met the financial requirements owing to the inadequate reliable evidence before him. There was further inadequate evidence that suitable accommodation was available. Specifically the judge found that there was inadequate evidence to establish on the balance probabilities that the appellant sponsor could not continue their family life outside the UK. At paragraph 61 the judge found that the public interest outweighed the human rights of the appellant and the is right so clearly considered.
16. There is nothing in the decision which can be established as irrational or meets the high threshold of perversity. In sum there was a lack of evidence in the appeal to demonstrate fulfilment of the immigration requirements and a lack of evidence to show that there were unjustifiably harsh consequences flowing from the refusal.
17. The decision of Judge Thorne discloses no material error of law and will stand.

Signed *Helen Rimington*
Upper Tribunal Judge Rimington

Date 23rd April 2018