Upper Tribunal

(Immigration and Asylum Chamber) Appeal Number: HU/18293/2018;
HU/18295/2018;
HU/18299/2018;
HU/18302/2018

THE IMMIGRATION ACT

Heard at Field House	**Decision & Reasons Promulgated**
On 16th July 2019	**On 15th August 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE MCCLURE

Between

SN, SO, MS & MBS

(ANONYMITY DIRECTION MADE)

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr J Oliveira-Agnew, Counsel, instructed by Kitty Falls Immigration Law

For the Respondent: Mr C Avery, Senior Home Officer Presenting Officer

DECISION AND REASONS

1. This is an appeal by the Appellants against the decision of First-tier Tribunal Judge Mailer promulgated on the 29th March 2019 whereby the judge dismissed the appellants' appeals against the decision of the respondent to refuse the appellants' human rights claims based on Article 8 of the ECHR.

2. I have considered whether or not it is appropriate to make an anonymity direction. As the proceedings concern the status and rights of children, I considered it appropriate to make an anonymity direction.

3. Leave to appeal to the Upper Tribunal was granted by First-tier Tribunal Judge Grimmet on 12th June 2019. Thus the case appeared before me to determine whether or not there was a material error of law in the decision.

Background

4. The first appellant entered the UK in January 2010 as a Tier 4 student. In Nepal the appellant was married to a lady, J. By the age of 21 he had 2 daughters by the lady. J and the 2 daughters are living in Nepal. He has never divorced the lady J.

5. The first appellant went to university in Nepal where he met RS. The first appellant married RS. Bigamy is a criminal offence in Nepal.

6. When the appellant came to the United Kingdom RS was a dependant upon the appellant's application for entry to the United Kingdom as a student. She came with the first appellant to the United Kingdom ostensibly as his wife.

7. Having entered as a student there were a number of applications to extend his leave, some of which were refused, some of which were granted. The appellant ultimately was given leave until the 10th November 2015.

8. In July 2014, whilst the appellant was in Nepal, RS purportedly went through a marriage ceremony in a Hindu temple in Southampton, marrying another man. It is suggested that she had been seeking to divorce the appellant but there is no evidence that a formal legal divorce had been granted or that a declaration had been obtained that the marriage was void/voidable as illegal. The first appellant informed the Home Office that RS was no longer his dependant and RS's visa was revoked.

9. On 5 August 2014 the first and 2nd appellants met for the first time at Heathrow. It is claimed that the first and 2nd appellant began to live together in January 2015.

10. On the 9th or 10th November 2015 the first appellant made an application for leave but that application was refused. By this stage the appellant was seeking to rely upon his relationship with the 2nd appellant. The appellant was to be removed to Nepal, his country of nationality and removal directions were set. The first appellant was served with notice of the removal directions. At that stage the first appellant made a claim based upon family and private life.

11. On the 5th December 2017 his claims were rejected and certified as clearly unfounded.

12. The second appellant had entered the UK as a student in October 2012. There are references to the fact that the 2nd appellant was also married but that she discovered her husband was gay and she was seeking a divorce from him. Although it does not appear that she actually obtained a divorce. There had been periods of time when she had returned to Bangladesh, specifically in July 2014. She appears to have had no difficulty in returning to Bangladesh by reason of the fact that she was separated from her husband.

13. The 2nd appellant having returned on the 5th August 2014 to the United Kingdom from Bangladesh made a claim for asylum on 16 October 2014 but this was refused as of 20 March 2015. Her appeal against the refusal was dismissed as of 17 February 2016 and that decision was upheld on 22 April 2016 in the Upper Tribunal.

14. The first and 2nd appellants after meeting in August 2014 began a relationship. They had commenced to live together in about January 2015. The 3rd appellant was born on 10 November 2015. It appears that the first and 2nd appellant went through a marriage ceremony at a temple the Hindu Vedic Society in Southampton before the birth of the 3rd appellant. The 2nd appellant indicates that she did not want to give birth to her child when she was not married to the father of the child. The parties therefore went through a ceremony of marriage as indicated.

15. The first appellant had completed his BA degree in July 2015. He applied for further leave to study an MA [as referred to in paragraph 6 above] but that was refused on 22 December 2015.

16. The 2nd appellant had applied for asylum. The 2nd appellant's asylum claim was refused and her appeal dismissed on 17 February 2016. It has to be noted that at that stage the 2nd appellant's case was based upon the fact that she was a divorced woman with a child/children returning ostensibly to Bangladesh alone. The judge in the present appeal has commented on the fact that the 2nd appellant was clearly misrepresenting the facts at the time of that appeal in order to bolster her claim for asylum.

17. Further applications were made for leave to remain on the basis of family and private life. There were further refusals.

18. The 4th appellant was born 12 July 2017.

19. The first appellant was detained on 7 September 2017 but was released and made application for leave to remain with the 2nd appellant and his children as dependants.

20. By decisions taken on 22 August 2018 the applications for leave to remain in the United Kingdom under the Immigration Rules and on the basis of Article 8, family and private life by the appellants were all refused.

21. In summary the appellants have made a large number of applications for leave to remain which have variously been refused over the years and the appellants have for periods of time had no leave to be in the United Kingdom. It does not appear that the first appellant had leave to remain in the United Kingdom at the latest after 22 December 2015. The 2nd appellant did not have leave to remain in the United Kingdom after 17 February 2016.

22. The second appellant has had an asylum claim dismissed. It is to be noted at paragraphs 190-195 of the present decision that the judge both in the asylum decision and in the present appeal before the First-tier found that the 2nd appellant had sought to advance a case for asylum which was wholly untrue. The judge has specifically found that the 2nd appellant has actively sought to deceive both the respondent, the First-tier Tribunal and subsequently the Upper Tribunal.

23. The first appellant is the still married to his first wife J. The 2nd appellant has referred to being upset that he has not been totally honest with her because she appears to have been unaware of his first wife. However the judge has pointed out in paragraph 119 the fact that the 2nd appellant has not been entirely consistent in her evidence.

24. The first and 2nd appellant had been living together since January 2015. As a result of them living together they have 2 children. The first and 2nd appellant are however not married in law.

25. In raising issues it was being asserted that the first and 2nd appellant enjoyed family life together, that the 2nd appellant had problems coping with 2 children by reason of a mental health condition and that accordingly it would be a breach of Article 8 to expect the family either to go to Nepal or to Bangladesh with the possibility that the family would be separated either for a limited period of time or permanently.

Grounds of appeal

26. The first ground of appeal relates to the evidence of the second appellant’s mental health. Whilst the judge has recorded that there is

no up-to-date evidence relating to the first appellant's mental health, it is asserted that there was evidence in the following form:-

a) The first appellant's witness statement sets out that an ambulance had to be called on the 27th February 2019 because the second appellant was in crisis.

b) A letter from Dr Sargen dated 6th March 2019 in which it is reported that the second appellant had stated that she would be better off dead and her weekly prescription had been maintained due to a suicide risk.

c) The Portsmouth Council Early Help Assessment dated 30th January 2019 which records a recent overdose attempt by the second appellant and a referral by the second appellant's GP to the Multi-Agency Safeguarding hub as SO wellbeing had deteriorated.

27. It is submitted that the second appellant's mental health is material to the issue of whether the second appellant could capable of caring for the third and fourth appellants in either Nepal or in Bangladesh without the help and assistance of the first appellant.

28. In commenting that there was no up-to-date evidence with regard to the 2nd appellant's mental condition the judge did note that the 2nd appellant had been placed on antidepressant medication and that the medication had been continued. The judge was clearly aware of the letter from the general practitioner.

29. In referring to the fact that there was no up-to-date medical evidence, the judge was commenting upon the ability of the appellant to look after the children. The appellant was stated to be depressed and have suicidal thoughts. There was however was no up-to-date medical evidence to indicate that the appellant was unable to look after the children. In the past the appellant had been subject to highly erratic behaviour. Whilst there was some medical evidence to indicate that she was depressed and an indication that she had claimed to have suicidal thoughts, such had been dealt with. The evidence was not such as to bring into question her ability to look after the 2 children. As that was the central core of the challenge specific medical evidence to deal with the point was necessary in the evidence did not bring into question her ability to cope.

30. The judge was merely commenting that the assertion that the 2nd appellant was not capable of coping with the 3rd and 4th appellants required detailed medical basis and that the medical basis for that assertion was not present.

31. The judge had carefully assessed the evidence by the 2nd appellant and given valid reasons for finding that she had set out to deceive and been dishonest in giving her evidence on previous occasions and on this occasion before the First-tier Tribunal. In the light of that

finding an assertion that she was unable to cope with the 3rd and 4th appellants medical evidence was necessary to support that claim. The evidence that was being advance came nowhere near suggesting that she was mentally unfit to look after the children. Whilst she and the first appellant were making an assertion that was not supported by the necessary evidence and the judge was entitled to comment that there was no up-to-date evidence on that material aspect of the appellant's case.

32. As a 2nd aspect of the medical condition of the 2nd appellant it was being asserted that she would be unable to work due to her medical condition. Again that would have required a detailed medical report to support the appellant's contention. Up to date evidence of such was lacking and the judge was entitled to make the comment that it was lacking.

33. The second point taken is that the judge has cited that there is no legal barrier to interreligious marriages. It is asserted that the background evidence establishes that a Muslim woman cannot marry a non-Muslim. There is reference in paragraph 44 of the decision to the fact that the appellants have lied to family members to cover the fact that the 2nd appellant had married a non-Muslim.

34. From paragraph 161 onwards the judge has carefully looked at the evidence that had been submitted as to whether or not interreligious marriage was possible in Bangladesh. The background evidence was somewhat inconsistent. In paragraph 163 the judge has referred to the Australia Refugee Review Tribunal Enquiry in paragraph 162 reference was made to the UNHCR report and reference was also made to the CPIN. The judge has carefully looked at the evidence that was before him. The indications being that in Dhaka in Bangladesh interreligious marriages were more common. The point made the representative for the appellants was that the parties were not married.

35. As an alternative the judge has specifically considered the position with regard to Nepal, the home country of the first appellant. The judge looked carefully at the prospects of the first appellant obtaining a divorce from his first wife. There appeared to be no reason why the first appellant could not obtain a divorce from his first wife and potentially his 2nd wife RS. At that point the appellant could lawfully marry the 2nd appellant.

36. In part complaint is made that the first appellant if returned to Nepal may suffer the consequences of having committed bigamy. With respect it cannot be denied that the first appellant has committed a criminal offence and that the 2nd appellant was certainly aware that the first appellant was married to RS and yet she went through a ceremony of marriage despite knowing that. The argument seems to be that you cannot send us back to Nepal because facing the consequences of the first appellant's criminal conduct would impact

upon the children. It is an unattractive argument to say you cannot return me to my country of nationality because to do so would mean I would have to bear the consequences of my previous criminal conduct.

37. The judge assessed whether or not the family could return to Nepal. The judge has identified that the first, 3rd and 4th appellants would have been Nepalese citizens and as such entitled to enter Nepal. There appears to be no reason why the family could not go to Nepal. It may not be what the first appellant and 2nd appellant want but it is certainly a matter that the judge has carefully considered and given valid reasons for concluding that the parties could go to Nepal. Whilst it may require the first appellant to divorce his wife and marry the 2nd appellant, there was no reason why he should not do that if he wants to maintain a genuine family relationship.

38. The judge has pointed out in paragraph 57 that the first appellant has been in touch with a lawyer in Nepal and there appears to be no reason why a divorce could not be expedited in Nepal. There appears to be no reason therefore why he should not divorce.

39. In a very careful, well- structured decision the judge has considered all aspects of this case. The judge has considered the best interests of the children. In paragraph 153 the judge specifically assesses the best interests of the children. The judge thereafter takes account of the conduct of the first appellant in apparently entering into bigamous marriages. The judge in paragraph 159 has noted that Portsmouth City Council had in the past taken steps to make the children the subject of child in need planning. The judge specifically considers the analysis that has been undertaken in respect thereof.

40. Thereafter the judge has from paragraph 112 considered the prospects for the family in Nepal. The judge was satisfied that the 2nd appellant could enter Nepal with the first appellant and the children. The judge was satisfied that the 2nd appellant would be able to look after the children. The judge specifically considers the prospect of the first appellant serving a custodial sentence and was satisfied that the 2nd appellant would be able to look after the children in Nepal.

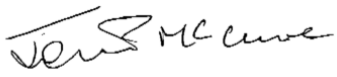
41. The judge has also from paragraph 220 onward considered the prospects for the family if the family were returned to Bangladesh. In accordance with the background reports he had noted that interreligious marriages were becoming more common especially in the larger cities.

42. The judge having assessed all the evidence came to the conclusion that there were no very significant obstacles to the integration of the family into either Nepal or Bangladesh. The judge has properly assessed all the factors and was entitled to come to the conclusion that he did on a very careful examination of the evidence before him.

43. In the circumstances I find that there is no material error of law.

Notice of Decision

44. I dismiss the appeals on all grounds.

Signed 

Deputy Upper Tribunal Judge McClure

Date: 7th August 2019