



IAC-FH-NL-V1

**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: IA/09522/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 6 August 2015
Prepared 6 August 2015**

**Decision & Reasons
Promulgated
On 17 August 2015**

Before

UPPER TRIBUNAL JUDGE MCGEACHY

Between

**MR AYAZ AHMAD
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: The appellant appeared in person
For the Respondent: Mr P Nath, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant, a citizen of Pakistan born on 18 October 1987 appeals, with permission, against a decision of Judge of the First-tier Tribunal Graves who in a determination promulgated on 6 February 2015 dismissed the appellant's appeal against a decision of the Secretary of State to refuse to

vary his leave and to remove him under Section 47 of the Immigration, Asylum and Nationality Act 2006.

2. The appellant entered Britain with leave as a student under Tier 4 of the PBS on 24 June 2010. He received further extensions of stay until 31 December 2013. Before that date he made an application for a further extension of stay to complete his accounting qualifications. That application was refused in February 2014 and it is against that refusal that the appellant appeals.
3. The basis of the refusal was that the appellant was refused under the provisions of paragraph 245ZX(a) because he had been refused on one of the general grounds for refusal set out in paragraph 322 of the Immigration Rules. It was stated that he had provided proof of finances by way of United Bank statement and a supporting letter but that that document had been confirmed as false by the issuing authority. The notice of refusal went on to say:-

“You have therefore used deception in this application and it is refused under paragraph 322(1A) of the Immigration Rules. This means that any future applications for entry clearance or leave to enter the UK you make could be refused under paragraph 320(7B) of the Immigration Rules.”
4. On the date of the appeal the Presenting Officer produced evidence that the appellant had entered into a marriage with an EEA national and made an application for a residence card. That application had been withdrawn in December 2013 when steps had been taken to annul the marriage. The appellant had then entered into an Islamic marriage with a British citizen but that marriage had also been annulled. In January 2015 he had been interviewed with an EEA national at Croydon Registry Office and a decision had been made that their marriage was not genuine.
5. The judge also had before him evidence that the appellant had an appeal in 2009 which had been determined on the papers but that the file had been destroyed so no copy of the decision was available to the Tribunal. The appellant denied that he had had an earlier appeal.
6. Because the Immigration Officer’s report regarding the appellant’s third marriage had not been produced until the morning of the hearing the judge put the hearing back. The appellant’s representative applied for an adjournment to take instructions but that application was refused because such a long period had passed since the decision had been made and the appeal had been adjourned on one other occasion. In any event the judge pointed out that the appeal related to the respondent’s claim that the letter from United Bank and the statements were not genuine and that was the main issue before the Tribunal. He said that he was willing to put the case back if the appellant wished his partner to attend court but was told that was not necessary as his partner had returned to Portugal. The appellant’s representative then said that he needed time to decide whether or not to withdraw the appeal so that the outcome of separate proceedings in relation to the claimed marriage of convenience could be known but as there were no separate proceedings anticipated and as the appellant had not indicated that he did wish to withdraw the appeal the

judge decided that that was not an appropriate ground on which to adjourn. It appears that the appellant's representative protested that there would be separate legal proceedings in relation to the marriage and that the judge's decision would prejudice the outcome of those proceedings but the judge pointed out that as there was no pre-action correspondence and the appellant's representative could not identify which proceedings would be brought or against whom. He could not therefore accept there was any reason why he should, as asked, recuse himself.

7. The judge in his determination, having set out the burden and standard of proof and the relevant law and noting that the burden of proof lay on the respondent, considered the documentary evidence before him with regard to the email chain running up to conclusion of the respondent that the bank statements were not genuine. The appellant confirmed that the email address of the United Bank Limited was the correct email address but his representative argued that the emails were not genuine and implied that the respondent had obtained false documents to support her case.
8. The judge noted that the appellant could not explain why the bank had stated that the documents were not genuine and merely stated that the bank had made a mistake stating that the emails came from the bank branch rather than the central office. The appellant's claim was that his family had closed the account for him.
9. The judge noted arguments by the Presenting Officer regarding the appearance of the documentation on which the appellant had relied and the judge noted that the signature of the same person was different on two documents as was the contact telephone number and that there were grammatical errors with missing words and phrases which raised concern, such as "please note this accountant has been closed".
10. The judge correctly stated in paragraph 27 of the determination that he had no expertise in the examination or the authentication of documents, however on the face of the evidence before him he found that the respondent had discharged the burden of proof. He stated:-

"She has obtained confirmation from the issuing authority, the contact details of which the appellant accepts are correct, that the documents are not genuine. On their face, the documents also do not look like official documents, and this assessment, when taken in the round, with the appellant's own oral evidence and the emails, supports the conclusion that they are not genuine."
11. In paragraph 28 of the determination he went on to say it was not necessary for him to make findings about the claimed marriage of convenience to reach his decision but he did comment in that paragraph that he had not found the appellant to be truthful and gave reasons for that conclusion.
12. He considered the rights of the appellant under Article 8 of the ECHR and found that the interference in the appellant's private life rights was

justified. He therefore dismissed the appeal under the Immigration Rules and under Article 8 of the ECHR.

13. Although the application was refused in the First-tier permission to appeal was granted in the Upper Tribunal, Upper Tribunal Judge Lindsley saying it was arguable that the judge should have adjourned the hearing given that evidence had been supplied on the day of the hearing which had changed the case which the appellant had to meet. She went on to state:-

“It is however arguable that ultimately that Judge Graves made findings on the issue of the alleged marriage of the appellant and Ms Nunes at paragraphs 28, 29 and 31 without the full interview notes and thus contrary to Miah (interviewers’ comments; disclosure; fairness) [2014] UKUT 00515; without following Papajorgii (EEA spouse – marriage of convenience) Greece [2012] UKUT 00038; and that the guidance in Nwaigwe (adjournment fairness) [2014] UKUT 418 had not been followed.”

14. At the hearing of the appeal before me the appellant appeared in person. He stated that he had bank statements from Barclays Bank that would have shown that he had sufficient funds to meet the requirements of the Rules when he had made his application. He said that he had closed the bank account in Pakistan but in any event he had not needed to rely on that account. He went on to say that his relationship with Ms Nunes had now ended because she had had to return to Portugal because of the illness and death of her grandmother and was unable to return to Britain. He stated that he had obtained a degree from Oxford Brookes University.
15. Mr Nath argued that the conclusions of the judge were open to him – he referred to the email chain which was before the judge showing the gathering of the evidence from the bank in Pakistan by the British High Commission.
16. I consider that there is no material error of law in the determination of the judge of the First-tier Tribunal. The reality is that the appellant was refused because it was believed by the respondent that he had attempted to rely on documents from a bank in Pakistan which were not genuine. The judge clearly applied the correct standard of proof and correctly placed the burden of proof upon the respondent. His conclusions were well-reasoned. I can see no reason why it would have been appropriate for the judge to have adjourned the appeal and indeed it is clear that the judge very properly not only gave the appellant’s representative time to consider the evidence but was willing to adjourn the appeal so that Ms Nunes could give evidence. The reality is however that the issue before the judge was the refusal of the extension of stay as a student and not that relating to the appellant’s attempted marriage. On the issue before him the judge clearly reached conclusions which were fully open to him.

Notice of Decision

15. In these circumstances, I having found that there is no material error of law in the determination of the judge find that her decision dismissing this appeal on both immigration and human rights grounds shall stand.
16. No anonymity direction is made.

Signed

Date

Upper Tribunal Judge McGeachy

I have dismissed the appeal and therefore there can be no fee award.

Signed

Date

Upper Tribunal Judge McGeachy