



**Upper Tribunal  
(Immigration and Asylum Chamber)  
HU/11456/2017**

**Appeal Number:**

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 7 December 2018**

**Decision & Reasons Promulgated  
On 20 December 2018**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE DOYLE**

**Between**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**and**

**HARDEEP SINGH**

(ANONYMITY DIRECTION NOT MADE)

Respondent

**Representation:**

For the Appellant: Mr S Walker, Senior Home Office Presenting Officer  
For the Respondent: Miss T Bird (counsel) instructed by Paul John & Co,  
solicitors

**DECISION AND REASONS**

1, I have considered whether any parties require the protection of an anonymity direction. No anonymity direction was made previously in respect of this Appellant. Having considered all the circumstances and evidence I do not consider it necessary to make an anonymity direction.

2. The Secretary of State for the Home Department brings this appeal but in order to avoid confusion the parties are referred to as they were in the First-tier Tribunal. This is an appeal by the Secretary of State against a decision of First-tier Tribunal Judge Phull, promulgated on 05/09/2018 which allowed the Appellant's appeal on article 8 ECHR grounds.

## Background

3. The Appellant was born on 12/05/1978 and is a national of India. On 25/09/2017

the Secretary of State refused the Appellant's application for leave to remain in the UK.

## The Judge's Decision

4. The Appellant appealed to the First-tier Tribunal. First-tier Tribunal Judge Phull ("the Judge") allowed the appeal against the Respondent's decision. Grounds of appeal were lodged and on 16/10/2018 Judge Parkes gave permission to appeal stating

1. The respondent seeks permission to appeal against a decision of the First-tier Tribunal Judge Phull promulgated on 5 September 2018 whereby the appellant's appeal against the Secretary of State's decision was allowed. The application is in time and is admitted.

2. The Judge found there were insurmountable obstacles to the appellant's family life continuing in India and allowed the appeal under article 8 having regard to the terms of paragraph EX.1 of appendix FM.

3. The grounds argue that the Judge erred in finding that the marriage was genuine and subsisting and not a sham. There was evidence that the appellant and sponsor did not live together and this had not been addressed by the Judge. There was little evidence of the nature of the relationship and it was not clear that the Judge had properly considered the stepson's care needs or why he could not living in India. The Judge erred in finding that the appellant's precarious status was neutral. The Judge had not addressed inconsistencies in the marriage interview.

4. The points made by the Home Office are arguable. As there was evidence to show that the appellant and sponsor were not living together that would call into question the nature of the relationship and any support it was claimed was needed or provided. Added to the inconsistencies in the interview it is arguable that the reasons given did not justify the decision.

5. The grounds disclose an arguable error of law and permission to appeal is granted.

## The Hearing

5. For the respondent, Mr Walker moved the grounds of appeal. He told me that the Judge was wrong to find that the marriage between the appellant and sponsor was genuine and subsisting. He told me that there was little evidence of a marital relationship and that the Judge gave inadequate consideration to the care needs of the sponsor's son. He told me that the evidence before the Judge included an interview record which disclosed many inconsistencies & which was not considered by the Judge.

He classified this appeal as “a reasons challenge”, saying that the Judge did not properly engage with the evidence and as a result made errors of fact, which are material errors of law. He asked me to set the decision aside

6. For the appellant, Miss Bird told me that the decision does not contain errors, material or otherwise. She told me that the Judge carefully considered all of the evidence and explained why weight was placed on certain strands of evidence. She described the Judge’s findings of fact as “detailed, logical & cogent”. She told me that at [16] the Judge dealt with discrepancies in the interview record. She told me that the Judge carried out a thorough analysis of the evidence provided, and considered all matters in the round. She told me that any perceived inconsistencies are minimal and that the Judge reached conclusions well within the range of reasonable conclusions available to the Judge. She urged me to dismiss the appeal and allow the decision to stand.

### Analysis

7. At [3] of the decision the Judge makes an error in relation to the burden and standard of proof. This appeal is on article 8 ECHR grounds only. In human rights appeals, it is for the Appellant to show that there has been an interference with his or her human rights. If that is established, and the relevant article permits, it is then for the Respondent to establish that the interference was justified. The appropriate standard of proof is whether there are “substantial grounds for believing the evidence.”

8. The error at [3] is not a material error of law because it is clear from reading the decision as a whole the Judge applies the correct burden and standard of proof.

9. Between [4] and [7] the Judge summarises the evidence. Between [8] and [9] the Judge summarises the submissions. The Judge’s findings of fact lie between [11] and [32].

10. The Judge starts [12] by finding the appellant and sponsor to be credible witnesses, and then in the following paragraph sets out reasons for finding the appellant and sponsor to be credible. At [15] and [16] the Judge considers the marriage interview records in detail and explains why the Judge finds that the respondent’s criticisms of the performance of the appellant and sponsor at interview have no merit.

11. At [17] the Judge reiterates that she finds the appellant to be a credible witness. [18] the Judge finds that the appellant meets the eligibility requirements of the rules. At [20] the Judge finds that the appellant and sponsor are in a genuine and subsisting relationship and that there are insurmountable obstacles to family life continuing outside the UK. The Judge records that the Home Office presenting officer did not challenge the sponsor’s evidence relating to insurmountable obstacles. The Home Office presenting officer’s minute, which is attached to the

application for permission to appeal, confirms that the sponsor's evidence went unchallenged.

12. The Judge turns to article 8 ECHR grounds of appeal from [23]. At [24] the Judge considers section 117B of the 2002 Act, and at [25] the Judge emphasises that the appellant establishes both family and private life within the meaning of article 8. The Judge then carries out a proportionality exercise.

13. In Green (Article 8 - new rules) [2013] UKUT 254 (IAC) the Tribunal said that

Giving weight to a factor one way or another is for the fact-finding Tribunal and the assignment of weight will rarely give rise to an error of law.

14. In Shizad (sufficiency of reasons: set aside) [2013] UKUT 85 (IAC) the Tribunal held that (i) Although there is a legal duty to give a brief explanation of the conclusions on the central issue on which an appeal is determined, those reasons need not be extensive if the decision as a whole makes sense, having regard to the material accepted by the judge; (ii) Although a decision may contain an error of law where the requirements to give adequate reasons are not met, the Upper Tribunal would not normally set aside a decision of the First-tier Tribunal where there has been no misdirection of law, the fact-finding process cannot be criticised and the relevant Country Guidance has been taken into account, unless the conclusions the judge draws from the primary data were not reasonably open to him or her.

15. The Judge reached a conclusion that the respondent does not like. She reached the conclusion after taking correct guidance in law and by applying the correct legal test. The Judge found that article 8 family and private life is engaged. The Judge took a balance sheet approach to her proportionality assessment. The conclusion she reached is well within the range of reasonable conclusions available to the judge.

16. In R (on the application of Luma Sh Khairdin) v SSHD (NIA 2002: Part 5A) IJR [2014] UKUT 00566 (IAC) it was held where the Upper Tribunal is considering, pursuant to section 11 of the Tribunals, Courts and Enforcement Act 2007, whether there is an error of law in the decision of the First-tier Tribunal involving Article 8 proportionality, the task of the Upper Tribunal is confined (at that point) to deciding if the First-tier Tribunal's assessment of where to strike the balance was unlawful, according to the error of law principles set out in R (Iran) [2005] EWCA Civ 982. In R (Iran) v SSHD (2005) EWCA civ 982 the Court of Appeal said that a decision on proportionality of an Immigration Judge who has properly directed himself can only be overturned on reconsideration on traditional public law grounds.

17. There is nothing wrong with the Judge's fact-finding exercise. The Judge correctly directed herself in law. The Judge reached conclusions well within the range of reasonable conclusions available to the Judge.

**18. The decision does not contain a material error of law. The Judge's decision stands.**

A handwritten signature in grey ink, appearing to read "Paul Doyle". The signature is written in a cursive, flowing style.

**DECISION**

**19. The appeal is dismissed. The decision of the First-tier Tribunal, promulgated on 5 September 2018, stands.**

Signed  
December 2018

Date 12

Deputy Upper Tribunal Judge Doyle