



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/22948/2016

THE IMMIGRATION ACTS

Heard at Liverpool
On 30th April 2018

Decision & Reasons Promulgated
On 23rd May 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE M A HALL

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

KHAJA SAKIB
(ANONYMITY DIRECTION NOT MADE)

Respondent

Representation:

For the Appellant: Mr C Bates, Senior Home Office Presenting Officer

For the Respondent: Mr T Hussain of Counsel instructed by Maya Solicitors

DECISION AND REASONS

Introduction and Background

1. The Secretary of State appeals against a decision of Judge Tobin (the judge) of the First-tier Tribunal (the FTT) promulgated on 20th June 2017.
2. The Respondent before the Upper Tribunal was the Appellant before the FTT. I will refer to him as the Claimant. He is a Bangladeshi national born 2nd January 1986. On 9th December 2015 the Claimant made an application for leave to remain in the UK

based upon his relationship with his partner Shabina Hussain to whom I shall refer as the Sponsor. The application was refused on 28th September 2016 as it was not accepted that the Claimant and Sponsor had a genuine and subsisting marriage and therefore the application was refused with reference to paragraph E-LTRP.1.7. The application was also refused on financial grounds.

3. The Claimant appealed to the FTT and the appeal was heard on 23rd May 2017. It was conceded by the Secretary of State at the appeal, that the financial requirements were satisfied. The only issue before the FTT was therefore said to be whether the Claimant and Sponsor had a genuine relationship.
4. The judge heard evidence from the Claimant and Sponsor and found on a balance of probabilities that the Claimant is engaged in a genuine and subsisting marriage with the Sponsor and the appeal was allowed.
5. The Secretary of State applied for permission to appeal to the Upper Tribunal. In summary it was contended that the judge had erred in law by failing to correctly analyse whether the marriage is genuine. The judge had recorded that he felt the Claimant's motives in marrying the Sponsor were not genuine and were a measure to enable him to remain in the UK. The judge had found the Sponsor to be credible, and had therefore allowed the appeal.
6. It was submitted that the Sponsor had in fact also been taken in by the Claimant, and the judge was wrong to find a genuine and subsisting relationship, based only on the Sponsor's evidence, when he did not accept that the Claimant was genuine.
7. Permission to appeal was granted by Judge Scott-Baker who found the grounds arguable.
8. The Claimant submitted a response pursuant to rule 24 of the Tribunal Procedure (Upper Tribunal) Rules 2008 following the grant of permission, contending in summary that the judge had not erred, in finding that the Claimant and Sponsor had entered into a genuine and subsisting marriage.
9. Directions were issued that there should be a hearing before the Upper Tribunal to ascertain whether the FTT decision disclosed an error of law such that it should be set aside.

Submissions

10. Mr Bates relied upon the grounds contained within the application for permission to appeal. It was submitted that the credibility of the Claimant was a key issue and the judge had found him not credible at paragraph 20 of the decision. The judge had found the Sponsor was committed to the marriage, but had erred in law in finding the marriage to be genuine, based only on the Sponsor's genuine commitment.
11. Mr Bates submitted that the findings made by the judge were inadequately reasoned and arguably irrational and perverse.

12. Mr Hussain relied upon the rule 24 response, submitting that there was ample evidence before the judge to prove that the marriage is genuine although some of that evidence had not been referred to in the FTT decision. I was asked to find that the judge had not erred in law, had concluded that the marriage is genuine based upon the totality of the evidence submitted, and had given adequate reasons for that finding.
13. At the conclusion of oral submissions, I reserved my decision.

My Conclusions and Reasons

14. I must decide whether the judge misdirected himself in law by failing to correctly analyse whether the marriage between the Claimant and Sponsor is genuine. There is no doubt that the judge appreciated the issue that needed to be decided, as in paragraph 16 he records the concession that the financial requirements were satisfied, and therefore the issue to be decided related to the relationship.
15. The Respondent refused the application with reference to E-LTRP.1.7 which is set out below;

“The relationship between the applicant and their partner must be genuine and subsisting.”
16. The challenge to this decision has been brought about by the comments made by the judge at paragraph 20. He records that he is “not at all convinced by the Appellant however.” He notes that when the Claimant and Sponsor met the Claimant’s immigration status was precarious, and he notes that the couple met through family contacts and that it was an arranged marriage. The judge records that he is “convinced it was a measure to secure the Appellant leave to remain in the UK.” The judge goes on to record that he does not believe the Claimant’s motives were genuine at the outset of the marriage.
17. However, the judge also found at paragraph 17 when shown a substantial number of photographs of the Claimant and Sponsor, that “these photographs were consistent with, at least, an enduring contact between the Appellant and his partner over the last two years.”
18. At paragraph 18 the judge considered the discrepancies highlighted by the Secretary of State in the marriage interview and recorded “I do find the discrepancies are not so weighty, so as to convince me that this is not a subsisting relationship.” The judge also recorded in the same paragraph that the Claimant and Sponsor were asked a number of questions during the hearing and there appeared to be no inconsistency.
19. The judge recorded at paragraph 19 that the couple had moved to Manchester and recently bought a house. The judge described the Sponsor as an impressive and truthful witness.

20. If the judge believed that the Claimant was not in a genuine and subsisting relationship with the Sponsor, then he erred in law in allowing this appeal.
21. I do not find that the judge made such a finding. It is clear that the judge had doubts about the Claimant's motives when he entered the arranged marriage. After expressing those reservations at paragraph 20 the judge goes on to record that he is entirely convinced by the Sponsor that the marriage is now genuine and subsisting. In my view this means that the judge was satisfied that at the date of hearing the marriage is genuine and subsisting. The judge goes on to state that in addition to the Sponsor's evidence he is "also convinced by the corroborative documentary evidence in the bundle and also the photographs."
22. The concluding paragraph is paragraph 21 and I set that out below:
 - "21. Looking at matters in the round as I am required to do, notwithstanding my reservations in respect of the Appellant's motivation, I find on the balance of probabilities that the Appellant is engaged in a genuine and substantive marriage with his UK Sponsor. Accordingly, I allow this appeal under the Immigration Rules."
23. In my view the judge had reservations about the Claimant's motivation at the outset of the marriage, but was satisfied by the evidence presented, that as at the date of hearing the Claimant is engaged in a genuine and substantive marriage. I do not find that the judge has materially erred in law, and my view is that the judge has found the marriage to be genuine and subsisting based upon the evidence of both the Claimant and Sponsor at the date of hearing.
24. The judge erred in allowing the appeal under the Immigration Rules. There is no provision to allow an appeal under the Immigration Rules. This point was not taken by the Secretary of State, and is not a material error. The judge should have allowed the appeal on human rights grounds, as the refusal of leave to remain is deemed to be a refusal of a human rights claim.

Notice of Decision

The decision of the FTT does not disclose a material error of law. I do not set aside the decision. The appeal of the Secretary of State is dismissed.

There has been no request for anonymity and I see no need to make an anonymity direction.

Signed

Date

Deputy Upper Tribunal Judge M A Hall

3rd May 2018

**TO THE RESPONDENT
FEE AWARD**

The decision of the FTT stands and therefore so does the decision not to make a fee award.

Signed

Date

Deputy Upper Tribunal Judge M A Hall

3rd May 2018