



Upper Tribunal

(Immigration and Asylum Chamber)

Appeal Number: HU/04031/2018

THE IMMIGRATION ACTS

Heard at Field House, London

Decision & Reasons Promulgated

On the 1st August 2019

On the 16th August 2019

Before:

DISTRICT JUDGE MCGINTY
SITTING AS A DEPUTY UPPER TRIBUNAL JUDGE

Between:

MR JARNAIL SINGH
(Anonymity Direction not made)

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr O'Brien (Counsel)

For the Respondent: Mr Melvin (Senior Home Office Presenting Officer)

DECISION AND REASONS

1. This is the Appellant's appeal against the decision of First-tier Tribunal Judge Hussain promulgated on the 9th April 2019, following a hearing at Hatton Cross on the 18th March 2019.
2. The Appellant is a national of India who was born on the 15th June 1959. He had initially come to the United Kingdom on a visitor visa valid from the 15th July 2002 until the 15th January 2003. On the 4th March 2003 he made an application for Leave to Remain on the basis of work permit employment, which was refused with a right to appeal on the 1st October 2003. On the 11th November 2016 he was served with a notice to an overstayer. On the 28th July 2017 he submitted an application for Leave to Remain on the basis of his family and private life in the United Kingdom, and in particular in respect of his claimed relationship with [RD]. However, that application was refused by the Secretary of State on the 24th January 2018, and his appeal against that refusal was heard by Judge Hussain at Hatton Cross on the 18th March 2019.
3. In refusing the Appellant's appeal, Judge Hussain found that whilst the Appellant and his claimed partner were members of the same household, there did not exist between them a relationship akin to marriage. At the appeal hearing before Judge Hussain, there was no Home Office Presenting Officer present, and therefore the Judge asked the Appellant's barrister to explore with the Appellant and his claimed partner Miss [D] issues concerning their life together. The Judge heard from the Appellant and Miss [D], and also heard from Miss [D]'s son, [PD] who adopted his statement as evidence-in-chief and was not asked any questions. In rejecting the Appellant's account that he was in a genuine and subsisting relationship with Miss [D], the Judge noted that in two statements previously written by the Appellant and sponsor in support of a former application to the Home Office, it was said that

they had known each other for “many years, and we have been good friends” when in fact the Appellant’s claimed partner was in fact his sister-in-law, following his brother’s marriage in 1977. The Judge found that concealment of that issue was not consistent with someone who was being truthful. The Judge accepted that the Appellant had been a member of the sponsor’s household since arrival in the country in 2002, but found that there were inconsistencies in the evidence of the Appellant and the sponsor regarding when they had first been intimate, and when they had last been intimate. He also concluded that it was highly unlikely that the Appellant and sponsor would have formed a relationship in March 2015 so soon after the death of the Appellant’s brother in January 2015.

4. The Judge further noted that the Appellant’s partner’s son had also given evidence at paragraph 28 and adopted as a witness statement and found that whereas the witness claimed that the Appellant lived the majority of time in the house of his father, the Appellant’s evidence indicated that he had lived there all the time he had been in this country. The Judge stated in paragraph 6, *“the witness claimed ‘my mum was living on her own until the Appellant moved in with her’. This is contrary to the impression given to me which was that the Appellant and his partner were living in the same household through the former’s residence in this country”* and that *“no impression was given by the Appellant or his sponsor that the Appellant from somewhere else moved in to live with his partner when he formed his relationship in March 2015”*.
5. The Judge therefore concluded that this was not a genuine and subsisting relationship and that the Appellant’s Human Rights would not be breached as a result of the Respondent’s decision.

6. The Appellant seeks to rely upon six grounds of appeal, as set out within the documentation of the 6th June 2019. Although permission to appeal was initially refused by First-tier Tribunal Judge Saffer on the 10th May 2019, who considered that the grounds amounted to no more than disagreement with the findings of the Judge, permission was granted by Deputy Upper Tribunal Judge Chapman on the 26th June 2019. She found that the grounds did raise arguable errors of law in particular the first two grounds which related to the alleged failure of the Judge to take into consideration the clinical psychological report of Dr Rozmin Halari given its potentially corroborative impact on the assessment of whether or not the relationship between the Appellant and the sponsor was genuine and subsisting. However, she found that all grounds could be argued.

7. I am most grateful to Mr Melvin for having produced a Rule 24 Reply dated the 31st July 2019, in which it was accepted that the First-tier Tribunal had not considered the psychological report and not made findings on that report, but argued that even if as claimed the 61-year-old sponsor was practically and emotionally reliant upon the Appellant that did not show that the relationship was genuine and subsisting. It is said that the expert relied upon what the sponsor had told her at the meeting in January 2019 on which the report was based and that for an expert to compile a report of that kind the expert would be expected to individually assess both parties to be able to form any opinion as to whether or not they were happily married or in a very close loving relationship. It is argued that the Judge has fully assessed the core issue as to whether or not there was a genuine and subsisting relationship and the Judge considered the evidence given by the Appellant and the sponsor and the sponsor's son and made findings that were open to him and that the Judge found that the sponsor's evidence was evasive and inconsistent and that the son's evidence

was contrary to the sponsor's evidence of when she and the Appellant began living together.

8. Within the first ground of appeal it is argued that the Judge's findings that the Appellant and sponsor were not in a genuine and subsisting relationship was flawed by reason of the Judge's failure to consider the expert psychological report from Dr Halari dated the 14th January 2019, which is said to make clear both the extent of the sponsor's practical reliance upon the Appellant but also the extent of her emotional and psychological reliance upon him and the devastating potential consequences for her mental health including potentially a second suicide attempt should she be separated from him. It is argued that the Appellant's Skeleton Argument had raised that the report showed the depth of their relationship and the Judge had not addressed that report at all in his reasoning. It is argued that at paragraph 26 Judge Hussain had said that there was "*an absence of objective evidence to support*" the claimed relationship suggesting that the report had been disregarded in its entirety.
9. In the second ground of appeal it is argued that Dr Halari had also mentioned at paragraph 9 of the report that the sponsor had said that she had been diagnosed with a migraine condition and that it was affecting her memory and that the sponsor's own statement had referred to ongoing specialist medical attention being required for her migraines. It is argued that the Judge had not taken account of the concerns raised regarding the sponsor's memory and the potential impact upon her evidence when considering any alleged inconsistencies in the evidence.
10. In the third ground of appeal it is argued that the Judge's overall approach was flawed and unfair and that whereas at the start the

Judge had indicated that he required to hear some evidence about the parties' living arrangements and relationship he had not otherwise raised particular concerns and had not put to the Appellant and sponsor concerns regarding exactly when their relationship had begun or when they had last been intimate. It was further argued that the Judge had not put to the Appellant and sponsor the matters raised by the Judge at paragraph 25 of the decision when finding there was deliberate concealment of the fact that the Appellant had known his sponsor since his brother's marriage in 1977 and that his partner was in fact his sister-in-law, as this had not been mentioned in two previous statements wherein it was simply said that they had known each other "for many years and we have been good friends". It is argued that there is no contradiction between those than being brother and sister-in-law and being good friends and if the Judge was concerned about that matter he could and should have raised it with them at the hearing. It is further argued that it was unfair for the Judge had not raised concerns regarding the relationship having started so soon after the death of the Appellant's brother in January 2015.

11. In the fourth ground of appeal it is argued that the Judge erred in his assessment of the evidence of [PD] at paragraph 28 when stating that "*whereas this witness claimed that the Appellant lived the majority of time in the house of his father, the Appellant's evidence indicated that he had lived there all of the time he has been in this country*". It is argued that the evidence of the two witnesses is entirely consistent.
12. In the fifth ground of appeal it is argued that the Judge should have taken account of the evidence given by both the Appellant and sponsor, with the sponsor's evidence being given after the Appellant's

evidence and without her hearing the same, that sexual intercourse was not frequent between them because of the sponsor's ill health.

13. It was further argued in ground 6 that the Judge having rejected the genuineness of the relationship failed to go on to consider whether there was nevertheless a family life or strong private life as a result of the sponsor's reliance upon the Appellant as demonstrated by the report of Dr Halari before reaching a final conclusion on Article 8.

My Findings on Error of Law and Materiality

14. As stated within the Rule 24 Reply, the Secretary of State does concede that the First-tier Tribunal Judge has not considered the psychological report within his Judgment and not made findings on that report. However, it is argued that there was no material error in that regard as evidence showing that the sponsor was practically and emotionally reliant on the Appellant did not show the relationship was genuine and subsisting and that in order for the expert to have gone beyond that and considered whether or not they were in a happy marriage or in a close loving relationship and friendship as stated within that report, the expert should have spoken to both the Appellant and the sponsor, not simply the sponsor. Mr Melvin argued that no weight whatsoever should be attached to the psychological report.

15. Although Mr Melvin sought to argue that in writing the report, Dr Halari purely based his diagnosis and findings on the information provided to him by the sponsor, the medical expert was clearly exercising his own professional judgement in assessing the information provided, and was not simply repeating it. In addition, Dr Halari noted how the sponsor had started to shake, cry and become a little hysterical when talking about the possibility of the Appellant leaving the United Kingdom and how she had said that she would not be able

to cope without Mr Singh. She described him as being “*part of my life, I don’t want to be without him. There is no life for me*”. He noted how she said she would become suicidal and depressed if he were to leave and how she had been very distressed, tearful and upset during the assessment. Dr Halari opined that Miss [D] was displaying signs and symptoms of low mood which may progress into clinical depression if she had separated from Mr Singh, as that would cause disruption to their family unit. He opined that were the Appellant to be removed, this would lead to a further deterioration in the sponsor’s mental and physical health and that there would be a significant deterioration in her mental state if Mr Singh were to be removed.

16. Although as Mr Melvin stated, the expert may have gone beyond his role in finding that Miss [D] and Mr Singh had a very close, loving relationship and friendship at paragraph 72, and that they were in a genuine relationship at paragraph 62, that does not mean that no weight at all should have been attached to the psychological report. The expert was able to opine as to the sponsor’s current state of health mentally, and the effect upon her of the Appellant’s removal from the United Kingdom, and her level of dependency upon him. This is evidence which is relevant to the question as to whether or not the couple are in a genuine and subsisting relationship or, where they simply live in the same household. This is evidence which should have been considered by the Judge in the round, when deciding whether or not the Appellant and his sponsor were in a genuine and subsisting relationship or simply living in the same household. It cannot be said that the decision would necessarily be the same, had that report been taken into account by the First-tier Tribunal Judge, when considering that issue. I do therefore find that there is a material error of law in the failure of the First-tier Tribunal Judge to take account of the evidence of Dr Halari.

17. Although in ground 2 it is argued that the sponsor had told Dr Halari that her memory was being affected by her migraines, it is argued that the Judge failed to consider that issue, when the question of migraines had also been raised in her statement, I am not satisfied that that ground reveals a material error of law, given that it was simply her assertion to Dr Halari that that was the case and in the absence of any other supporting medical evidence.
18. In respect of the other grounds of appeal the Judge has to put every inconsistency between the sponsor and the Appellant in respect of when they first started having a sexual relationship and when they were last intimate to them. The evidence in that regard was inconsistent and the Judge was entitled to rely upon that inconsistency. However, in respect of the Judge's finding that there had been concealment in respect of the two statements written by the Appellant and the sponsor in respect of a previous application to the Home Office when they said that they had known each other for "many years, and we have been good friends" when in fact they were brother and sister-in-law following the Appellant's brother's marriage in 1977, has not been adequately explained. The fact that two people are brother and sister-in-law does not prevent them from being good friends.
19. Further, if the Judge was to find that the true nature of their previous relationship in terms of being brother and sister-in-law had been concealed, by means of that previous statement, that was something that should in fairness have been put to them when giving their evidence by the Judge, as that was not an issue previously raised by the Secretary of State. Further, as it was not a matter previously raised, the Judge should have in fairness raised with the Appellant and

sponsor his concerns that they would not have formed a relationship so soon after the death of the Appellant's brother in January 2015.

20. I am further not satisfied that the Judge's findings at paragraph 28 regarding the purported inconsistency between [PD] and the Appellant regarding how long the Appellant had lived at [52 -] has been adequately explained. Although the Judge stated that Mr [D] had claimed the Appellant had lived the majority of time in the house with his father, the Appellant's evidence indicates that he had lived there all the time he had been in this country, and that further the evidence in the statement of Mr [D] that "my mum was living on her own until the Appellant moved in with her" was contrary to the impression given to him that the Appellant and his partner were living in the same household throughout the former's residence in this country. In the Appellant's statement dated the 10th March 2019 at paragraph 6 the Appellant has stated

"6. ... I have lived with my late brother and [R] at [52 -] for most of the 15 years that I have been in the UK. However I only started living with [R] in her home as her partner in February/March 2015.

7. For short periods of time I have lived with my sister [RT] and for short periods of time I have lived at the Sikh Temple as I am a practising devout Sikh. I spent most of my time in the UK volunteering at the local Sikh Temple and giving to the local community and practising my faith".

21. In his witness statement [PD] at paragraph 5 had stated that "over the last 15 years I confirm my uncle has lived at this address the majority of time he has been in the UK". He also stated in that paragraph that he knew that his uncle also had stayed at the Sikh

Temple for several days or weeks and that on other occasions had been living with [RT]. Although at paragraph 2 Mr [D] had said that “*I can confirm that in February or March Jarnail moved in to live with my mother*” and at paragraph 6 said that “*my mum was living on her own until the Appellant moved in with her*”, no questions were asked of Mr [D] to clarify the position as set out within paragraphs 2, 5 and 6 of his statement.

22. The Appellant’s own witness statement seems to me to be consistent with what was said at paragraph 5 of Mr [D]’s statement, and it has not been explained by the First-tier Tribunal Judge as to how or why he formed the impression that the Appellant’s own evidence was that he and his partner had been living in the same household throughout the Appellant’s residence in the United Kingdom.
23. Grounds 5 and 6, in light of my findings above, do not add anything to the appeal, and do not reveal material errors of law.
24. However, for the reasons set out above, I do find that the First-tier Tribunal Judge did materially err in not taking account of the psychological report when considering the question as to whether or not the Appellant and the sponsor were in a genuine and subsisting relationship, and that the Judge further procedurally erred, in failing to put several of his concerns to the parties, that had not previously been raised as a reason for refusal, in respect of the question of them having “concealed” the nature of the previous relationship as brother and sister-in-law, and as to the rapidity of the development of their relationship following the death of the Appellant’s brother in January 2015.

25. Given that in my judgement, the assessment of the credibility of the Appellant and the sponsor needs to be undertaken afresh, I find that the decision of First-tier Tribunal Judge Hussain be set aside, and the case be remitted back to the First-tier Tribunal for re-hearing. Although Mr O'Brien asked me to preserve the finding at paragraph 30 that if the Judge accepted that the Appellant and sponsor were in a genuine and subsisting relationship, he would have concluded that there were insurmountable obstacles to them being able to enjoy family life outside of the United Kingdom having regard to the voluminous evidence including an expert report on the current situation in India, although there was no cross-appeal by the Secretary of State as indicated by Mr O'Brien, there has not been a full consideration of those issues by the Judge, as they were not actually findings made by him.

26. In my judgement it is important that as credibility is an issue, all of the evidence should be considered, and all of the matters reassessed. I therefore do not preserve any findings of fact, and the matter is to be remitted back to the First-tier Tribunal for a re-hearing de novo before any First-tier Tribunal Judge other than First-tier Tribunal Judge M.B. Hussain.

Notice of Decision

The decision of First-tier Tribunal Judge Hussain does contain material errors of law and is set aside in its entirety. The matter is remitted back to the First-tier Tribunal for re-hearing before any First-tier Tribunal Judge other than First-tier Tribunal Judge M.B. Hussain.

No application was made for anonymity before the First-tier Tribunal nor before me, and therefore I make no Order in respect of anonymity.

Signed

D J McGinty
District Judge McGinty
sitting as a Deputy Upper Tribunal Judge

Dated 1st August 2019