



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/07404/2018

THE IMMIGRATION ACTS

Heard at Manchester CJC
On 22 January 2019

Decision & Reasons Promulgated
On 14 February 2019

Before

DEPUTY UPPER TRIBUNAL JUDGE ALIS

Between

MRS SUNARA BEGUM
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mrs Zahoor, Solicitor

For the Respondent: Mr Bates, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant entered the United Kingdom on April 22, 2015 as a spouse with leave to remain until December 10, 2017. On December 4, 2017 she applied for further leave to remain but the respondent refused this application on March 12, 2018 as he was not satisfied their relationship was genuine and subsisting or that they had met the requirements of Appendix FM for the purposes of the financial requirements.
2. Grounds of appeal were lodged by the appellant under Section 82(1) of the Nationality, Immigration and Asylum Act 2002 on March 22, 2018.

3. Her appeal came before Judge of the First-tier Tribunal Lloyd-Smith on October 2, 2018 and in a decision promulgated on October 12, 2018 she refused the appeal. Permission to appeal was sought on October 27, 2018 on the basis the Judge had failed to properly assess the evidence in support of her claim that the marriage was subsisting and had erred when assessing the financial documents and in carrying out an Article 8 ECHR assessment.
4. Judge of the First-tier Tribunal Keane granted permission to appeal on November 9, 2018 finding it was arguable the Judge had approached the appellant's evidence with a premature and preconceived view of the evidence.
5. No anonymity direction is made.

SUBMISSIONS

6. Mrs Zahoor adopted the grounds of appeal. She submitted there was ample evidence before the Judge of their relationship, and she submitted that the Judge's findings were both biased and unfair and contradicted the evidence before her. There was evidence that they had been in a relationship since 2011 and that the marriage was subsisting but this evidence was given insufficient weight. Instead, the Judge placed too much weight on a police report that had been adduced as evidence in circumstances where those complaints were never proceeded with. The comments contained in the report were the personal comments of a police officer and the Judge should have placed more weight on the evidence provided by both the appellant and the sponsor. There was evidence that they had been going for IVF treatment and taking all that evidence together she submitted the Judge erred in rejecting the claim that they were in a genuine and subsisting relationship.
7. Mrs Zahoor accepted that at the date of application the sponsor had only been earning £9,000 but pointed to the fact that the sponsor had been ill and had been unable to work as normal. She argued that they satisfied the financial requirements of the Immigration Rules at the date of hearing and referred to the second bundle of documents that included the sponsor's SA100 form, which is a tax return document sent to the sponsor to complete, and he had completed it identifying the fact that he had earned £28,471. She accepted that the requirements of Appendix FM-SE had not been complied with because there were no bank statements or accounts contained in either of the bundles adduced in evidence. However, she submitted that on the balance of probabilities there was evidence that they satisfied the financial requirements of the Rules.
8. Mr Bates responded to the application and submitted there was no material error in law. It was a serious accusation to suggest the Judge was biased and he submitted that the arguments advanced took the decision out of context. At paragraph 7 of the decision the Judge made it clear that before reaching any findings of fact she had considered all the evidence. He then submitted that the Judge set out why she did not believe the witnesses and did this in some considerable detail.

9. With regard to the finances he referred to paragraphs 8(a) to 8(f) of the Judge's decision. The Judge noted that insufficient evidence to support the claimed income had been provided and when assessing the shortfall, at the date of application, the Judge noted that the two health issues relied on did not fall within the period of assessment. The Judge also made adverse findings regarding the sponsor's employment with Uber and ultimately rejected the claim that he had earned £18,823. All the findings made were open to the Judge and there was no material error in her approach to that evidence.
10. Mr Bates addressed the issue of genuine and subsisting relationship and referred to paragraphs 9 and 10 of the decision. The Judge had already made adverse findings about the sponsor and for a relationship to be genuine and subsisting it needed both parties to want to be in a genuine and subsisting relationship. The Judge did not place weight on the fact the sponsor had been arrested but made findings that were open to her about the sponsor's visits to his ex-wife. Whilst the respondent had originally accepted there was a genuine and subsisting relationship when the appellant entered the United Kingdom he submitted both the respondent and thereafter the Judge were entitled to find that when this current application was submitted the situation had materially changed because within three months of the appellant being admitted the sponsor had had an extramarital affair with his ex-wife which had led to the birth of another child. The Judge addressed the issue of IVF in paragraph 9 of her decision and the Judge gave reasons why she was not happy with the documents and evidence given.
11. With regard to Article 8 the starting point would have been that the relationship was not genuine and in such circumstances the appellant could not demonstrate family life and the financial requirements still remained outstanding. He invited me to dismiss the appeal.
12. Mrs Zahoor in response reiterated her earlier submissions and referred to the photographs and witness statements and the fact that until the marriage ended in divorce their marriage continued and it would be unduly harsh to require the appellant to leave in circumstances where it was her husband who had the affair rather than her.

FINDINGS

13. This is an appeal brought by the appellant against the Judge's decision to refuse her application for further leave to remain. In giving permission to appeal, Judge of the First-tier Tribunal Keane was robust in his language when granting permission suggesting that the Judge had approached the appeal with preconceived ideas of the evidence and he referred to paragraphs 8, 9 and 10 of the Judge's decision.
14. Allegations of bias are serious and in considering this appeal I have noted what the grounds of appeal alleged and the observations of the Judge who granted permission.

15. I am satisfied that the FTT Judge was not biased in her approach to these proceedings. At paragraph 7 she made it clear that in reaching her findings of fact she had considered all the evidence notwithstanding the order in which the issues were addressed. Mrs Zahoor submitted that this was probably a standard paragraph and it may well be that it is, but it is necessary to examine the Judge's decision as a whole.
16. The Judge commenced her assessment of the evidence by making the statement that she did not find the witnesses to be credible or consistent. If the Judge had left it there, then there would have been a material error in law. However, she proceeded over three pages to give detailed reasons for rejecting various aspects of the claim.
17. Turning therefore to the specific complaints regarding the decision, namely the Judge's approach to the relationship and finances, I make the following findings.
18. Mrs Zahoor conceded that the appellant did not meet the Immigration Rules when the application was put in. She stated that the respondent had been asked to exercise his discretion on the finances due to illness. At paragraph 8(b) the Judge addressed the issue of illness and bearing in mind the application was submitted in December 2017 she noted the heart problem (February 2014) pre-dated the application by a substantial period and the knee injury (May 2018) post-dated it. It was therefore incorrect to say the Judge had not considered the overall financial situation.
19. I raised with Mrs Zahoor why she believed the appellant and the sponsor met the financial requirement at the date of hearing and she referred to bundle "A2" pages 32 and 33. I pointed out to her that under Appendix FM-SE of the Immigration Rules it was required to provide more evidence and a simple tax return did not satisfy the Immigration Rules. I referred her to section 7 of A1 which set out what documents were required for someone who was self-employed. It was apparent that the sponsor had not provided personal bank statements showing his claimed income and had not produced either audited or unaudited accounts from an accountant. In those circumstances the Judge was entitled to find that the financial requirements of the Immigration Rules had not been met either at the date of application or the date of hearing.
20. The Judge, in paragraphs 8(c) and (d), referred to discrepancies in the evidence between the sponsor and a witness. I therefore find that the Judge was entitled to make those findings on financial issues and there is no material error in law on that point.
21. The Judge did not accept there was a genuine and subsisting relationship. Whilst the respondent had accepted the relationship at the date of entry, subsequent evidence raised significant questions about that relationship.
22. The Judge addressed this relationship in paragraphs 9 and 10 of her decision. The Judge was aware both the appellant and sponsor claimed they were in a genuine relationship but at paragraph 9, the Judge addressed the issue of IVF treatment and pointed to inconsistencies and an absence of other documents.

23. The Judge can only assess evidence placed before her and if the appellant and sponsor had felt more evidence should have been adduced then it was incumbent on them to submit it.
24. In considering their accounts relating to the IVF treatment the Judge took into account other adverse credibility findings as she was entitled to do. It was significant that within three months of the appellant being given leave to enter the sponsor had an extramarital affair with his former wife. He could not deny the affair because a child had been the result.
25. The sponsor maintained this was in the past and that his only contact with her now was in relation to the children. The Judge took into account a police report that had been adduced in evidence which referred to the fact that the sponsor attended at the former wife's home address on a regular basis to see the children and according to the report he had pestered his former wife into having sex. The sponsor did not deny having sex but simply said he was weak and in effect blamed the former wife for the relationship.
26. It was argued before the FTT Judge that the ex-wife was not vulnerable, but the Judge rejected that submission. She also rejected his claim that the sponsor was lured into a trap in an attempt to end his marriage and she made a finding that it was more likely than not that the sponsor was intending to continue having sex with his former wife and this only stopped following a police complaint. That finding was open to the Judge and she was then entitled to consider whether that impacted on the genuineness and subsisting nature of the relationship. The Judge accepted there were photographs of the sponsor and appellant together and that they were still married but concluded that the relationship was not genuine.
27. The grounds of appeal, that were advanced before me on this issue, amounted to a disagreement with the Judge's decision. Mrs Zahoor was attempting to reargue the issues that had been argued originally before the First-tier Tribunal.
28. Having made those findings, the Judge then went on to consider the matter outside of the Immigration Rules and at paragraph 15 she addressed Section 117B of the Nationality, Immigration and Asylum Act 2002 and gave adequate reasons for rejecting the claim.
29. Mrs Zahoor argued that the appellant was being penalised for her husband's extramarital affair but ultimately the Judge did not accept the relationship as genuine and as her leave was of a limited nature she was only entitled to remain here as long as the relationship was genuine and subsisting.
30. As the Judge concluded their relationship was not genuine or subsisting she Judge was entitled to make a finding that it would not be disproportionate to refuse the appellant further leave to remain.
31. I therefore find there is no error of law on the ground adduced.

NOTICE OF DECISION

32. I dismiss the grounds of appeal and I uphold the original decision.

Signed

Date 8/2/2019

A handwritten signature in black ink, appearing to read "SPALis", with a horizontal line underneath.

Deputy Upper Tribunal Judge Alis

TO THE RESPONDENT
FEE AWARD

No fee award made as I have dismissed the appeal.

Signed

Date 8/2/2019

A handwritten signature in black ink, appearing to read "SPALis", with a horizontal line underneath.

Deputy Upper Tribunal Judge Alis