Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/07165/2019

THE IMMIGRATION ACTS

Heard at Bradford via Skype	**Decision & Reasons Promulgated**
On 11 November 2020	**On 14 December 2020**

THE IMMIGRATION ACTS

Before

UPPER TRIBUNAL JUDGE HANSON

Between

AZRA SAJJAD
(Anonymity direction not made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Rehman instructed by Kenton Solicitors.
For the Respondent: Mr Melvin, Senior Home Office Presenting Officer

ERROR OF LAW FINDING AND REASONS

1. The appellant appeals with permission a decision of First-tier Tribunal Judge Skehan promulgated on the 28 February 2020 in which the Judge dismissed the appellant's appeal against the decision of an Entry Clearance Officer (ECO) to

refuse her application for leave to enter the United Kingdom pursuant to Appendix FM of the Immigration Rules.

2. The application was refused as the ECO was not satisfied sufficient evidence had been adduced to show the appellant met the financial eligibility requirements of the Rules, although this matter was resolved by the production of relevant payslips before the Judge, because the appellant did to meet the relationship requirements of the Rules, and because no exceptional circumstances were made out sufficient to warrant admission to the UK outside the Rules pursuant to Article 8 ECHR.

3. At [6] the Judge records that it was agreed between the parties that the only issue within the appeal was the genuineness of the appellant's marriage.

4. The Judges findings are set out at [7] of the decision in relation to the Immigration Rules and at [9] in relation to Article 8 ECHR. In these paragraphs the Judge writes:

> 7. In considering this issue I note that I was not provided with an immigration history for the appellant. The appellant has stated within her previous correspondence with the respondent that she lived in the UK between January 2005 and April 2012. This is at odds with the information provided by the sponsor who told me that she lived in Pakistan for 19 years. I expressly raised the possibility with the sponsor that he may be confused and explained to him that he had an opportunity to clarify his evidence providing me with further details relating to his relationship. I was not provided with any clarification from the sponsor. The sponsor told me that he had spent the last month and a half in Pakistan with the appellant. In the circumstances there has been an obvious opportunity to collate documentation that would support evidence of cohabitation, or at least recent pictures of the couple together. This is an unusual case where the appellant and sponsor claim to have been married for 20 years. The appellant has had the benefit of legal advice in preparing this appeal, and the paucity of supporting documentation is unusual. While I note the provision of international calling cards, these do not provide any evidence as to who used these cards or what numbers were called. I acknowledge the possibility of confusion on the sponsor's part, however I have not been provided with any medical evidence that might assist me in weighing sponsors evidence. For the avoidance of doubt, I consider the absence of children to be irrelevant in determining the genuineness of the relationship.
>
> …
>
> 9. The appellant has not shown a family life with the sponsor and as such Article 8 is not engaged. I do not for this reason go on to consider the further steps within Razgar. The respondent's failure to admit the appellant to the United Kingdom is not unlawful under section 6 of the Human Rights Act 1998 and in particular with regard to the right to respect for private and family life contained in article 8 of ECHR.

5. Permission to appeal was granted by a Designated Judge of the First-tier Tribunal

Error of law

6. At the commencement of the hearing it was necessary to consider an application made by the appellant pursuant to Rule 15(2A) of the Upper Tribunal Procedure Rules in light of the fact the bundle that had been prepared for the purposes of

the hearing contained evidence that was not before the Judge. That evidence went to the core of one aspect of the appellant's case namely the time it is alleged the appellant and sponsor spent together in Pakistan and the appellant's time in the United Kingdom. This was all information that was available at the date of the earlier hearing, but not produced, and it was not established the test in Ladd v Marshall was met in the appellant's favour. No satisfactory explanation for the failure to provide this material earlier was forthcoming. It was also the case that Mr Melvin had not seen this material with there being no evidence before the Upper Tribunal to show it had been served upon the respondent in good time.

7. Whilst that evidence may support a future application it was not made out in all the circumstances, including the overriding objectives and interests of justice, that such material should be admitted at this stage, especially when the matter the Upper Tribunal was considering is whether the Judge has erred in law in a manner material to the decision to dismiss the appeal on the basis of the evidence available to the Judge at the date of hearing.

8. In relation to the Judge's comments concerning the fact the sponsor was confused, Mr Rehman submitted that he is 72 years of age and that old people can get confused.

9. It is also asserted the Judge failed to consider the evidence available concerning the appellant's stay in the United Kingdom, with specific reference to the Visa application where in reply to a question the appellant stated that she had travelled to the UK arriving on 24 January 2005 and leaving on 27 April 2012 and that the purpose of the trip was for a family visit. There is also reference to question 32 and reference to a Visa application having been made in Pakistan for a visit which was refused on 13 July 2015 on the basis the appellant was told to apply for a spouse visa. It is also alleged the Judge failed to take into account the information provided in the appellant's copy passports. Mr Melvin challenged the reference to the passports on the basis this did not form part of the grounds of appeal but there is arguable merit that it falls within ground number four in which the Judge is said to have erred in failing to consider the appellant's evidence properly.

10. At page 8 of the appellant's bundle is an extract from the appellant's passport bearing the stamp of the High Commissioner for Pakistan, London dated 30 September 2005.

11. It is also asserted there are a number of photographs of the appellant and sponsor which was evidence before the Judge.

12. It is argued that had the Judge considered the evidence properly, in light of the decision in GA (see below) a different decision may have been made.

13. On behalf of the Secretary of State Mr Melvin submitted a number of the points that have been made were not made before the Judge and did not appear in either the evidence before the First-tier Tribunal, the application for permission to appeal, or in the grant of permission.

14. It is settled law that a Tribunal or Court should restrict the parties arguments to those upon which permission to appeal was granted; see Latayan v Secretary of State for the Home Department [2020] EWCA Civ 191 at [32] (Talpada applied).

15. The terms of the grant by the Designated Judge are in the following terms:

> The grounds assert the Judge arguably erred in law first, by in failing properly and in its cultural context to consider the evidence for the Appellant and second, in failing to give adequate reasons to reject that evidence.
>
> The judge's decision recalls the only issue was the subsistence (incorrectly referred to as genuineness) of the marriage which had been contracted in 1999. At paragraph 3 (vii)-(ix) the Judge noted the sponsors evidence about the times he had spent in Pakistan with the Appellant. Her findings in the first part of paragraph 7 of her decision arguably fail to address or adequately address the Sponsor's claim that the Appellant had lived in the United Kingdom a long time ago and the Appellant's statement that she had lived in the United Kingdom between January 2005 and April 2012.
>
> The point which the Judge makes at paragraph 3(vi) about stamps in passports arguably does not reflect an understanding of the behaviour of many dual nationals visiting their country of other nationality to produce to immigration control the passport issued by the country whose immigration officials are going to inspect it.
>
> The grounds refer to evidence of photographs of the Appellant and the Sponsor together over a period of time. The Judge refers to these at paragraph 4(i) upon which the comment "they have provided a wedding and other photographs to confirm this", that is there subsisting relationship. Having referred to the photographs the Judge proceeds later at paragraph 5 to comment that she was provided with various photographs of the Appellant's wedding day (emphasis added) upon which he makes no comment or findings.
>
> At paragraph 7 of her findings she comments on the lack of documentation to support evidence of cohabitation, visits or at least recent pictures of the couple together that fails to explain how these comments relate to or are consistent with her earlier comments.
>
> The Judge commented on the paucity of supporting documentation, finding it unusual. It may be the Appellant failed to discharge the burden of proof upon her but it is arguable the Judge has not adequately shown to the Appellant as the losing party that her evidence and that of her husband has been carefully considered nor given sufficient reasons for her to understand why the evidence has been rejected.
>
> Both grounds of appeal disclose arguable errors of law and permission to appeal is granted.

16. It is therefore clear that both the grounds and the grant of permission referred to the issues raised by Mr Rehman which were matters before the Judge, even ignoring the material that was not admitted.
17. Mr Melvin submitted that reading of the decision shows that the Judge did consider the question of whether it had been established there was a subsisting relationship but noted the paucity of evidence provided.
18. It is argued the Judge noted the contradiction in the evidence regarding the appellant's presence in the United Kingdom even though the Judge gave the sponsor the opportunity to correct the evidence.
19. Having considered the material available together with competing arguments it is clear the Judge's finding that the evidence that was made available was somewhat limited is a finding within the range of those reasonable open to the Judge. There is no explanation for why this was so or why basis information

such as a chronology showing the appellants immigration history was not before the Judge.

20. There was no medical evidence to support the submission the sponsor may have an impaired ability to recall facts and despite the Judge giving the sponsor the opportunity to clarify what is a clear contradiction in the evidence the sponsor was unable to do so.

21. The Judge clearly took all the evidence into account and summarises such at [3] – [5] of the decision under challenge.

22. The reason the Judge dismissed the appeal can clearly be understood from a reading of the decision which is that the appellant had not provided sufficient evidence to support the contention that her and the sponsor were in a subsisting marriage.

23. Relevant case law is the decision in Goudey (subsisting marriage – evidence) Sudan [2012] UKUT 00041(IAC) in which the Tribunal held:

> (i) GA ("Subsisting" marriage) Ghana* [2006] UKAIT 00046 means that the matrimonial relationship must continue at the relevant time rather than just the formality of a marriage, but it does not require the production of particular evidence of mutual devotion before entry clearance can be granted;
>
> (ii) Evidence of telephone cards is capable of being corroborative of the contention of the parties that they communicate by telephone, even if such data cannot confirm the particular number the sponsor was calling in the country in question. It is not a requirement that the parties also write or text each other.
>
> (iii) Where there are no countervailing factors generating suspicion as to the intentions of the parties, such evidence may be sufficient to discharge the burden of proof on the claimant.

24. Whilst Mr Rahman referred to headnote (ii) in support of his argument the Judge had erred in the assessment of the telephone calling cards this cannot be taken out of context. The Judge clearly considered all the available evidence but found that there were countervailing factors which cast doubt upon the appellant's claim.

25. Evidence relating to 2005, such as the stamp referred to in a passport referred to above, is historic. The reply to the question in the Visa application is not, of itself, determinative and has to be considered against the other evidence available to the Judge.

26. I do not find it has been made out the Judge failed to consider the evidence properly. In addition to the documentary evidence the Judge had the benefit of seeing and hearing oral evidence being given. The findings are supported by adequate reasons including the observation that despite having been claimed to have been married for 20 years very little supporting evidence was provided. The weight to be given to the evidence that was provided was a matter for the Judge. The Judge specifically refers to the claim the appellant was in the UK

between 2005 and 2012 but did not find this determinative for which adequate reason have been given.

27. The Court of Appeal have recently reminded us that an appellate court must not interfere with the decision of a court below unless a genuine error of law material to the decision has been established. In many cases there may be more than one finding available to Judge depending upon the interpretation given to the evidence. The fact the appellant suggests that on the evidence alternative findings should have been made does not mean that the findings actually made was wrong or outside the range of findings that were available to the Judge.

28. I do not find the appellant has established, despite a disagreement with the outcome and desire for a more favourable resolution to the appeal, that the Judge has erred in law in a manner material to the decision to dismiss the appeal. It is possible to understand why the Judge arrived at the conclusion she did. That conclusion has not been shown to be irrational or outside the range of possible outcomes on the evidence.

Decision

29. There is no material error of law in the Immigration Judge's decision. The determination shall stand.

Anonymity.

30. The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I make no such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed…….
Upper Tribunal Judge Hanson

Dated the 3 December 2020