IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-000867
First-tier Tribunal No: HU/58569/2023
LH/05080/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 04 September 2024

Before

UPPER TRIBUNAL JUDGE HANSON

Between

HASHIR ALI
(NO ANONYMITY ORDER MADE)

Appellant

and

AN ENTRY CLEARANCE OFFICER – SHEFFIELD.

Respondent

Representation:
For the Appellant: Mr Aziz, a Solicitor.
For the Respondent:

Heard at Phoenix House (Bradford) on 21 August 2024

DECISION AND REASONS

1. The Appellant appeals with permission a decision of First-tier Tribunal Judge Saffer ('the Judge'), promulgated following a hearing at Bradford on 6 January 2024, in which he dismissed the Appellant's appeal against the refusal of an application for entry clearance as the spouse of Anisa Kauser, a British national.
2. The Appellant is a citizen of Pakistan born on 24 May 1993. He applied on 8 May 2023 and the application was refused on 30 June 2023.
3. Having considered the documentary and oral evidence the Judge sets out his findings of fact from [39] of the decision under challenge.
4. The application had been refused, in part, on the basis it was said the Appellant could not meet the eligibility requirements of the Immigration Rules as a result of his having been convicted and imprisoned in Norway for an offence of domestic violence against his former wife.
5. At [39] the Judge accepts the Appellant was sentenced to 15 months imprisonment in Norway in 2019 for domestic violence. Although the Judge notes the Appellant claimed the allegations were false, the Judge found no basis on which he was entitled to go behind the conviction. The Judge was therefore

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satisfied the Appellant should be treated as having committed the offence. Although the Judge had no details of what the offence entailed, he was satisfied that it was sufficiently serious to justify a custodial sentence and to justify expulsion from Norway.

6. The Judge did not give the Appellant credit for having disclosed the conviction as he is required to tell the truth on his application form. The Judge noted, however, that the Applicant had lied in the application as he claimed he had always lived at the address in Rawalpindi, whereas he had lived in Norway.
7. An issue arose after the conclusion of the hearing requiring the Judge to issue a direction to the parties providing time for them to make submissions on the issue, which was responded to by the deadline provided. The Appellant's case is that the Sponsor is a widow and he was divorced from his former wife in Norway. He said the divorce was issued in Norway on 2 May 2018 as both the Appellant and his former wife were domiciled in Norway at the time, and that the Appellant and Sponsor were therefore free to marry on 12 August 2022.
8. The ECO's position is that having checked the certificates, both divorce and marriage certificates, it was not accepted that the Appellant and Sponsor were free to marry, as the Appellant was still married to his previous wife as there was no divorce at the time of their marriage on 12 August 2022, indicating the Appellant should have fallen for refusal under the eligibility relationship requirements too.
9. The Judge finds the document from Norway did not establish it is a divorce certificate akin to a decree absolute in the United Kingdom, as there was no evidence that it was. The Judge finds the reason the Divorce Notice was applied for in Rawalpindi was because the Appellant knew the Norwegian document was not a divorce certificate and that the Appellant therefore remained married on 11 April 2023 when the divorce was declared valid by the Rawalpindi Court [44].
10. The Judge accepted the Sponsor was free to marry having lost her husband in 2017.
11. At [46] the Judge finds the marriage is polygamous as the Appellant was not divorced on 12 August 2022 and that as the Sponsor had British domicile, she was not able to enter a polygamous marriage [46].
12. In the alternative, even if he was wrong regarding the marriage, the Judge finds there are no exceptional circumstances that fall within the Respondent's Family Policy or insurmountable obstacles to family life continuing outside the United Kingdom, for the reasons provided in the determination.
13. The Judge also finds the decision proportionate when considering Article 8 ECHR, on the facts.
14. The Appellant sought permission to appeal claiming the Judge had erred in law by (1) considering a matter not raised by the respondent in the Refusal letter after the hearing and reach conclusions based on speculation, failed to consider relevant evidence, and speculated as to plausibility, (2) made perverse credibility findings in relation to the evidence: incorrect assessment of the evidence, (3) failed to consider the Article 8 claim and exceptional circumstances adequately: gave inadequate reasons, (4) gave inadequate reasons for the conclusions in relation to very significant obstacles faced by the sponsor if she returned to Pakistan to live with her husband, (5) failed to consider exceptional circumstances leading to a material error of law and procedural unfairness to the Appellant; for the reasons set out in the Grounds seeking permission to appeal.
15. Permission to appeal was granted by a Designated Judge of the First-tier Tribunal on 4 March 2024, the operative part of the grant reading:

The first Ground for appeal takes issue with the Judge's request for further evidence to clarify the Appellant's marital status made after the hearing. In principle, such requests are sometimes appropriate and in this case the information supplied by the Appellant in the stitched bundle did raise an issue whether he had been divorced at the time he married the Sponsor. In response the Appellant supplied a Norwegian court document which was claimed to be a certificate of divorce pre-dating his marriage to the Sponsor with a translation. The Judge with reason found the Norwegian certificate to be at best ambiguous but did not refer back to the Appellant with his concerns. The consequent finding that the Appellant had not divorced his previous wife before marrying the Sponsor is one of the principal reasons why the appeal was dismissed. The Appellant has reason to consider the Judge has arguably erred in law in his treatment of the post-hearing evidence which was requested.

As to the second Ground for appeal, that the Judge arguably erred in law in giving little weight to the First Information Report submitted for the Appellant, because it is called a First Preliminary Report in the translation of it is arguably unsustainable and if so, arguably will have vitiated any findings about the claimed attacks in Pakistan on the Appellant and his Sponsor. Grounds of appeal 4 and 5 are based on much the same point.

The Ground for appeal in respect of the Article 8 claim fails to take account that it was for the Appellant to produce evidence by way of reference to the Pakistani equivalent of the Immigration Rules or similar that the Sponsor would not be able to obtain leave to enter or remain in Pakistan. It also fails to take account of the fact that the Appellant is not within the jurisdiction and the basic principle is that the State's obligation to protect rights granted by the European Convention extends only to those within the jurisdiction with the possible exception of children with a strong connection to the United Kingdom. This ground is mis-conceived.

Except for Ground 3 relating to the relevance of Article 8, the Grounds disclose arguable errors of law and permission to appeal on Grounds 1,2, 4 and 5 is granted.

16. The appeal is opposed by the Secretary of State in a Rule 24 reply dated 21 March 2024, the operative part of which reads:

2. The Respondent opposes the Appellant's appeal on the basis that none of the grounds disclose a material error of law. In the grant of permission, Judge Sharef appears to have intended to limit the grant of permission to grounds 1, 2, 4 and 5 only. However the notice of decision does not include any specific restriction (see Safi & Ors (permission to appeal decisions) [2018] UKUT 388 (IAC)). As it may be suggested by the Appellant that the grant of permission is unrestricted, this Rule 24 response responds to all grounds.

Ground 1

3. There are two parts to the first ground. The first part is a complaint that the Judge should have raised the issue of marriage validity at the hearing and not, as he did, only after the hearing. It should be noted that it is not suggested by the Appellant that it was procedurally unfair for the Judge to have raised the issue of marriage validity at all. It would likely be wrong for the Appellant to make that submission given caselaw does recognise that there are circumstances in which it is procedurally fair for a Judge to do so (see Secretary of State For the Home Department v Maheshwaran [2002] EWCA Civ 173).

4. The Respondent will submit that the approach the Judge took was not unfair. Firstly, as per Maheshwaran at §§3-4, whilst the issue of marriage validity was not taken by the Respondent in the Reasons for Refusal Letter, the Judge was entitled to raise concerns about that issue and gave both parties to address him on it. The issue

identified by the Judge was an obvious one – it is understandable why the Judge would be concerned about whether the Appellant was free to marry given the divorce certificate appears to have been issued after the marriage certificate.

5. Secondly, the Appellant complains that the Judge should have raised the issue at the hearing so that the Sponsor could have given oral evidence addressing it. However, if the Appellant's representatives believed at the time that the Appellant could not fairly deal with this issue without further oral evidence, they could have made that submission to the Tribunal in writing post hearing. They were given the opportunity to do so and did not suggest that the issue as a matter of fairness required further oral evidence to determine. Nor did they complain that the Judge in raising this issue was acting procedurally unfairly. This Tribunal should be slow to accept the submission that the FtT acted procedurally unfairly where the Appellant had the opportunity to object to the approach the FtT were taking and chose to say nothing about it.

6. It is in any event unclear what evidence the Sponsor would give on this issue. As the Judge accepts at §45, the Sponsor was free to marry the Appellant when she did, but the Appellant was not. It is not said that she has some sort of direct knowledge about when the Appellant divorced and it is not obvious what relevant oral evidence she could have given on this topic.

7. The rest of this ground is a perversity challenge. The Tribunal may only interfere with the decision on grounds of irrationality if is satisfied that no rational Judge could have acted in the same way and represents a very high hurdle (see R (Iran) & Ors v Secretary of State for the Home Department [2005] EWCA Civ 982).

8. The Judge's approach was plainly one open to him. The Judge at §44 is not making assumptions or taking into account UK divorce law – that is an extremely unfair reading of the decision. The Judge is rather considering a document which clearly relates to the Appellant's divorce but, beyond that, is difficult to decipher. It is unclear if it relates to the start of those proceedings or the end of them. The point the Judge is making is that this document is not like a decree absolute in that it does not clearly state if and when the Appellant was divorced. That is a fairly obvious point and not a finding that relies on some sort of assumption or comparison with UK divorce law.

9. Even if the Tribunal were to find a material error of law on ground 1, the overall decision is still sustainable given at §47, the Judge goes onto consider insurmountable obstacles and exceptional circumstances in the alternative.

Ground 2

10. This ground seeks to suggest that the Judge made contradictory findings regarding the Sponsor's credibility and that he took into account plausibility factors. It is said as a consequence of these errors that the Judge's assessment was perverse.

11. This ground relies on selective and partial quotations from the decision of the FtT and could be viewed as misleading. Where the Judge says at §48 that he has "no reason to doubt her", he is referring to her claim to have no family in Pakistan. The Judge is plainly not saying that he has no reason to doubt her on all matters. The Judge is entitled to accept some aspects of the Sponsor's evidence and reject others. It is perhaps unsurprising that he accepted the Sponsor's evidence on an issue that was uncontroversial and not obviously central to the issues in the appeal.

12. The rest of this ground is unparticularised. It is not stated which specific "plausibility" findings the Judge makes against the Appellant are problematic. The only finding which perhaps can fairly be characterised as a plausibility finding is that in §50 (with regards to exiting the airport). The caselaw quoted by the Appellant is not particularly relevant as they relate to asylum claims in which the lower standard

applies. Even in the asylum context however, a Judge is entitled to take into account the inherent likelihood of a claim being true (see in particular KB & AH (credibility-structured approach: Pakistan) [2017] UKUT 491 (IAC)). The Judge, here was perfectly entitled to take into account the fact that it would be unlikely that the Appellant would have been able to leave the country if the ex-wife's family had as much influence and power as claimed.

13. In the grant of PTA, Judge Shaerf, refers to the Judge's treatment of the first information report. Though he relates that to ground 2, ground 2 does not include any particular attack on the Judge's assessment of the FIR. In any event, it was rationally open to the Judge to take this into account - "preliminary" and "information" are not synonyms and the Judge could not just assume that the inconsistency was down to a mistranslation. In any event, this was a case in which the Tribunal had rejected the Appellant's claim for a number of reasons and even if one of those reasons does not bear scrutiny, that is not a basis for setting aside the Judge's decision: HK v Secretary of State for the Home Department [2006] EWCA Civ 1037 §45.

Ground 3

14. This ground amounts to little more than a disagreement with the Judge's finding. Reviewing the ASA, it appears to have never been the Appellant's case that there would be legal barriers to her continuining her family life in Pakistan. The Appellant's case was rather that he and the and Sponsor's life would be in danger in Pakistan. It is not open to the Appellant to seek to reargue the case on an entirely different basis to the way it was argued in the FtT. In any event, the Judge is entirely correct to note that there was no evidence before him of any legal barriers preventing the Sponsor living in Pakistan with her husband – the fact that the Sponsor is not a dual-national is beside the point.

15. The rest of this ground includes the bald assertion that the Judge failed to consider his application, witness statement or bundle of evidence. That is plainly not correct. The Judge did not need to refer to every single piece of evidence and the Tribunal must assume that the Judge did consider all the evidence unless there are compelling reasons to the contrary (Volpi & Anor v Volpi [2022] EWCA Civ 464 §2).

16. From §§53-55, the Judge considered Article 8 in line with Razgar and concluded that the decision does not interfere with any rights protected by Article 8, that the decision is lawful and, in any event, the decision is proportionate. The Judge was entitled to reach those findings and, even if the Judge was wrong to find that the decision did not interfere with Article 8, such an error is immaterial in light of the findings in the alternative on proportionality.

Ground 4

17. It is presumed that this ground meant to refer to insurmountable obstacles rather than very significant obstacles. Beyond that, this ground is entirely unparticularised. The Judge sets out to consider whether there are any insurmountable obstacles from §47 onwards and reaches detailed findings in relation to that issue. The Judge focuses on the issues raised by the Appellant and the grounds do not state what specifically Judge failed to take into account. It is difficult for the Respondent to respond in any further substance to the Appellant's complaint in this ground given it is not clear what that complaint is.

Ground 5

18. Contrary to what is asserted here, the Judge does consider whether there are exceptional circumstances. As the Judge explains at §47, there are no exceptional circumstances and/or insurmountable obstacles for the reasons that follow. To suggest as the grounds do that the Judge gives no reasons at all is clearly wrong.

19. In summary, the Respondent will submit inter alia that the judge of the First-tier Tribunal directed himself appropriately.

20. The Respondent requests an oral hearing.

Discussion and analysis

17. Ground 1, in effect, criticises the Judge for doing exactly was expected of him when an issue arose that was material to the case which the Judge realised no party had had the opportunity to make submissions or representations upon. The fact it was a matter not raised in the Refusal letter did not prevent the Judge from dealing with it. The duty of the Judge was to consider the evidence with the required degree of anxious scrutiny, to decide what weight could be placed upon that evidence, and whether the evidence that he was willing to accept meant the required test was satisfied.
18. The issue in relation to the ability of the Appellant to marry is a very relevant issue.
19. Rather than proceed to determine the appeal by referring to this evidence without giving the parties the opportunity to comment, which itself would have amounted to procedural unfairness, the Judge gave both parties the opportunity to make submissions and incorporated the same into the decision-making process. There is nothing procedurally wrong with that approach being taken by the Judge.
20. Mr Aziz was asked what he was claiming the legal error is. He stated the Judge had made an error in not hearing oral evidence from the Sponsor on this point, which he should have done. I do not find that submission has merit. The Appellant was represented. The representatives were aware that this matter was of concern to the Judge. They received a request for further submissions and chose to make written submissions. If the representatives believed oral evidence was required and they should have made the request for the hearing to be relisted at that stage. Although the Judge had the opportunity to recall the parties, he considered it sufficient to issue a direction to enable appropriate submissions to be made. I also note the response in the Rule 24 reply which is plausible. If the issue was the validity or otherwise of a document issued in Norway, and whether that established the Appellant was free to marry to Sponsor, it is not clear what evidence the Sponsor could have given, and/or what knowledge she had on this point over and above that the contained in the written submissions.
21. I find no error made out in relation to Ground 1.
22. Ground 2 alleges perversity. That admits a high threshold and suggest the Judge was wrong in a strange or offensive way. I do not find it is made out this threshold has been reached. Having considered the evidence with the required degree of anxious scrutiny the Judge sets out findings of facts which are supported by adequate reasons. The fact the Appellant does not like the Judge’s findings on the evidence does not mean they are perverse, irrational, or outside the range of those reasonably open to the Judge. I also do not find it made out that the manner in which the Judge approached the evidence is incorrect or infected by legal error. The weight to be given to the evidence was a matter for the Judge.
23. I find no error made out in relation to Ground 2.
24. There is no merit in the claim in Ground 3 that the Judge failed to consider the Article 8 claim and any exceptional circumstances adequately or gave inadequate reasons. A reading of the Judges assessment this aspect at the end of the determination shows the Judge considered the proportionality of any

interference with a protected right, balanced the competing arguments, but concluded that the public interest was determinative. That has not been shown to be finding outside the range of those reasonably open to the Judge on the evidence. It is not made out there is anything specific the Judge failed to incorporate into the assessment process. The weight to be given to the evidence was a matter for the Judge who had the benefit of not only considering the documentary evidence but also seeing and hearing oral evidence being given.

25. In relation to Ground 5, the Judge clearly considered whether there were exceptional circumstances but concluded there was nothing in the appeal sufficient to enable him to find that test satisfied, such that the decision was not proportionate. That is a sustainable finding on the facts and findings as a whole.
26. I do not find legal error has been made out in relation to Grounds 3, 4, or 5.
27. It has not been shown the Judge's conclusions are rationally objectionable and not outside the range of those reasonably open to him on the evidence.

Notice of Decision

28. First-tier Tribunal Judge has not been shown to have materially erred in law.
29. The determination shall stand.

C J Hanson

Judge of the Upper Tribunal
Immigration and Asylum Chamber

21 August 2024