



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: IA/27035/2012

THE IMMIGRATION ACTS

Heard at Bradford

On 17th June 2013

**Determination
Promulgated**

On 25th June 2013

Before

UPPER TRIBUNAL JUDGE D E TAYLOR

Between

TANVEER HUSSAIN

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Miss R Mahmood of Zenith Solicitors

For the Respondent: Mrs R Pettersen, Home Office Presenting Officer

DETERMINATION AND REASONS

1. This is the Appellant's appeal against the decision of Judge Walker made on the papers on 4th February 2013.

Background

2. The Appellant is a citizen of Pakistan born on 10th September 1982. He entered the UK on 21st January 2011 with entry clearance as a student valid to 20th April 2012. On 19th April 2012 he applied for leave to remain in the UK as the spouse of a British citizen. The application was refused on 6th November 2012 because the Respondent was not satisfied either that the Appellant was legally married to a person present and settled in the UK or that the marriage was subsisting or that the couple intended to live together.
3. The Appellant appealed against the decision but elected not to request an oral hearing, and his appeal was dismissed on the basis of the papers before the judge.
4. The Appellant sought permission to appeal on the grounds that the judge had overlooked the Sponsor's evidence. Misleadingly the grounds refer to her oral evidence but also to the fact that she submitted a written statement.
5. Permission to appeal was granted by Designated Judge Peart on 22nd February 2013 for the reasons stated in the grounds.
6. The Respondent served a reply on 21st March 2013 without sight of the file, defending the determination. However when Mrs Pettersen had had an opportunity to look at the file it was apparent to her that the statement had been overlooked, and she conceded that the decision would have to be remade.
7. The determination is set aside because the judge failed to take into account relevant evidence when deciding the appeal.

The Hearing

The oral evidence

8. Mr Hussain adopted his statement to stand as his evidence-in-chief. He said that the couple were married Islamically and did not feel it necessary to register the marriage until the Home Office asked them to do so. He produced an English marriage certificate.
9. The Appellant said that he knew his wife from Pakistan. He came to the UK on 22nd January 2011 and the Sponsor Yasmin Kausar came to meet him in Watford on the same day. A few days later they started to live together. They had met a couple of times before in Pakistan, the first time for three or four weeks and the second time for a month. He was asked whether the couple had lived together in Pakistan. He said that they had gone to a hotel and visited historical places but they were not alone and did not live as husband and wife because they had a joint family system there. He and Yasmin came from the same background.

10. Mrs Pettersen took him through the documents which he had produced to support his application. The Appellant claims to live at 559 Abbeydale Road Sheffield. He said that he was living at 75 Rupert Road Sheffield until August 2011 but had been at Abbeydale Road ever since. The couple live in a tenanted property and most of the household bills are addressed to the landlord, Mr S Quader, the person named on the shorthold tenancy agreement. It was put to him that he had also produced a council tax adjustment notice in the name of Sayeed Mohammed for the same address dated July 2010. The Appellant said that he thought they lived there and that the council tax was registered in his name but he did not ask. When asked how he got a document for 2010 when he did not move in until 2011 he said that he was given two documents and he did not know anything about the council tax he just paid his rent.
11. The Sponsor has produced bank statements for the period September 2011 to December 2011 when she gave an address in Leicester. The Appellant said that that was his wife's parent's address. She has also provided a bank statement covering the period from August 2011 to August 2012 when her address was given in Wakefield. The Appellant said that she had aunt there and he thought that she lived there for a few weeks, may be three or for months, visiting him at weekends. She was looking after her aunt who did not have any children of her own. He repeated that his wife had started living with him in January/February 2011.
12. The Sponsor has also produced a number of payslips showing her employment with Care Watch Leicester for the period July 2011 to February 2012. The Appellant said that she lost that job and had a new job with Network Taxis. There is a letter in the file from Network Taxis dated 12th September 2012 giving the Sponsor's address as 559 Abbeydale Road, Sheffield. The Appellant was unclear when she started working there, but he thought it was a few months after she came to him, possibly in the middle of 2012. He said that she was paid weekly, around £200 to £250 per week, but he had not asked.
13. The Appellant maintained that he had undergone a Nikka ceremony with Yasmin Kausar on 17th July 2011. He said that he called the Maulvi to his house. Two of his friends were witnesses, Mohamed Shafaqat and Ansir Khan. Someone called Raqeeb was there for his wife.
14. The Appellant was asked whether Yasmin had any illnesses. He said that she was pregnant and he thought that the baby was due in seven or eight months but he did not bring a doctor's report because no one had required it. He could get evidence if required. She had lost a baby seven or eight months ago when she had fallen down stairs because she was depressed.
15. Yasmin Kausar also gave evidence. She was asked when she first met the Appellant and she said that they had met in Watford. She had never been abroad and never been to Pakistan. When it was put to her that the

Appellant had said that they had met in Pakistan she said that they used to speak on the phone.

16. She was asked about the Nikka ceremony. She said that her brother was present, Amar Star, and her husband had two friends there but she could not remember their names. There was also a family friend called Raqeeb Alam.
17. The various addresses on the bank statements were put to her. The Sponsor said that she had gone to Wakefield because she had had an argument with her mother and changed to her aunt's address. So far as her work was concerned, she had moved to working with Berrystead in Sheffield two months ago and before that she was working for Home Care in Leicester but that finished at the beginning of 2012.
18. Finally, she maintained that she was pregnant but the doctor would not give her any report because of confidentiality issues. She had had two miscarriages because of the stress of her husband's visa.

Submissions

19. Unsurprisingly Mrs Pettersen submitted that the evidence given by the witnesses was wholly discrepant and unreliable and that the appeal ought to be dismissed.
20. Miss Mahmood maintained that both parties had lived together for two years and it would be possible to get evidence of the Sponsor's pregnancy. They had provided evidence in the form of a tenancy agreement to show that they were under one roof and she relied on the evidence which had been produced in support of the appeal.

Findings and Conclusions

21. I make the following findings of fact.
 - (a) At the date of decision this couple had not entered into a valid marriage recognised in the UK. The registry office wedding only took place on 17th December 2012.
 - (b) This is a marriage in form only with no substance. The evidence between the witnesses was wholly contradictory. The Appellant said that they met in Pakistan prior to his arrival in the UK in 2011. The Sponsor said that she had never been to Pakistan. The evidence from the bank statement shows that the Sponsor was living in Leicester and for a time in Wakefield, but not Sheffield.
 - (c) The Sponsor said that she had worked as a care worker in Leicester before taking up recent work in Sheffield with Berrystead. She has produced payslips showing that she worked in Leicester. The only evidence of her work in Sheffield is a letter from Network

Taxis but the Sponsor failed to mention that employment at all. I find that she has never worked in Sheffield. Nor does she live there.

(d) The parties state that they underwent a Nikka ceremony in July 2011 but have produced no evidence of that ceremony and their evidence about it was discrepant. The Appellant named two individuals whom he said were witnesses who were not named by the Sponsor.

(e) The witnesses claimed that the Sponsor was pregnant but produced absolutely no evidence to confirm the pregnancy. It would have been open to the Sponsor to obtain that evidence had she wished to do so. I find that she is not pregnant as claimed.

22. I conclude that the Appellant has sought to put forward a fraudulent claim to be in a genuine and subsisting relationship with the Sponsor. I find that their marriage is not subsisting, that they do not live together and there is no intention to do so in the future.

23. With respect to Article 8 there is no family life between this couple. Although they have undergone a registry office marriage, the marriage is in name only and has no substance. The Appellant has been in the UK for a short period of time, originally for a temporary purpose, and sought to remain here by attempting to deceive the immigration authorities. Article 8 is not engaged.

Decision

24. The decision of the judge has been set aside. It is remade as follows. The Appellant's appeal is dismissed under the Immigration Rules and with respect to Article 8.

Signed

Date 24th June 2013

Upper Tribunal Judge Taylor