

**Upper Tribunal
(Immigration and Asylum
Chamber)**
OA/07732/2013



Appeal Number:

THE IMMIGRATION ACTS

Heard at Field House, London

On 11th July 2014

Determination

Promulgated

On 1st Aug 2014

Before

UPPER TRIBUNAL JUDGE ROBERTS

Between

**MR GURSHARAN BIR SINGH
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Miss R Bagral, of Counsel

For the Respondent: Mr Tufon, Home Office Presenting Officer

DETERMINATION AND REASONS

1. This is the Appellant's appeal against the decision of Judge K F Walters, made following a hearing at Hatton Cross on 1st April 2014.

Background

2. The Appellant is a citizen of India born 16.10.1977. He is the husband of Babita Kumar, a British citizen (the Sponsor). The Appellant and Sponsor married in India in March 2010. The Sponsor has three children from a previous marriage.
3. The Appellant has a chequered immigration history. He entered the UK illegally in 2002. He was encountered by the immigration authorities in 2006 and at that time he gave a false name and date of birth. He then failed to keep in contact with the immigration authorities as instructed to do and in effect went to ground. He was next encountered by the authorities in March 2009; once again he failed to comply with his responsibility to keep them informed of his whereabouts but did eventually leave the UK by way of voluntary departure on 5th January 2010.
4. By this time he had formed a relationship with the Sponsor and as stated above he and the Sponsor married in India in March 2010.
5. In 2011, the Appellant applied to return to the United Kingdom as the spouse of his Sponsor. That application was refused. The Entry Clearance Officer noted that the Appellant had used a different identity when he came to the attention of the immigration authorities, had failed to keep in contact with the authorities and drew the conclusion that he could not be satisfied as to the genuineness of the relationship between the Appellant and Sponsor in December 2011.
6. The Appellant lodged a second application for entry clearance, which was refused by the Respondent on 7th March 2013. His appeal against that decision was dismissed by Judge Walters. He now seeks permission to appeal against Judge Walters' decision.

The Hearing

7. Before me, the Appellant was represented by Ms Bagral and the Respondent by Mr Tufon. Ms Bagral's submissions followed the lines of the grounds seeking permission. She outlined a three-fold challenge to the Judge's determination.
8. First the Judge misdirected himself on the *Devaseelan* point. She submitted that this is clear from a reading of the determination. The Judge properly referred to *Devaseelan*, but did not apply the guidance contained in it. *Devaseelan* should be the starting point in a determination, but if one looks at this determination, the Judge has erred in placing far too much emphasis and weight on the decision of the first Judge instead of reaching his own conclusions. The vast majority of the determination outlines and relies on the previous Judge's findings. This is the wrong approach. The hearing before Judge Walters gives the impression of a re-litigation of the facts found by the previous Tribunal. This error has led the Judge to fail to properly consider the fresh evidence which was before him.

9. This leads to the second and third challenges. There is no analysis of the witnesses' evidence and further there are inadequate reasons for any findings made.
10. In support of this Ms Bagral submitted, that the Judge took evidence from the Appellant's wife and her daughter. What also needed to be kept in mind is the two and a half year gap since the first appeal hearing. Despite hearing that fresh evidence, the analysis of the witnesses' evidence was wholly inadequate. In paragraph 47 the Judge states,

"...Sadly, however, I find that the Sponsor's and her daughter's perceptions and submissions made by for or on behalf of the Appellant, are not borne out by the evidence before me..."

The problem identified by Miss Bagral is that the Judge failed to show what the evidence before him consisted of. For example, photographs and greeting cards were handed in to the Judge at the hearing. He makes no mention of this - it is possible that evidence which may go to the heart of the issue was ignored.

11. This led the Judge to give inadequate reasons for his conclusions. He had depended too much on the determination of the previous Tribunal. Therefore the determination was not sustainable since the Appellant had not received a full and fair hearing.
12. Ms Bagral did accept that the end result for the Appellant may well be the same but made the point is that nevertheless he is entitled to a full and fair hearing.
13. Mr Tufon on behalf of the Respondent sensibly acknowledged that the determination contains serious errors. He attempted to persuade me that nevertheless the determination was sustainable, but did not press the point strongly.
14. I am satisfied for the reasons outlined by Ms Bagral, that the determination of Judge Walters contains material errors which requires it to be set aside and the decision remade. I am also satisfied that because of the inadequate analysis and reasoning in the determination, the Appellant has not received a full and fair hearing.
15. Both parties agreed that if I were to conclude that the decision should be set aside for legal error, the appropriate course would be to remit the matter to the First-tier Tribunal for a fresh hearing. Full and clear findings of fact based on the evidence before it needs to be made. None of the findings made by Judge Walters are preserved.

DECISION

16. The determination of the First-tier Tribunal is set aside. The matter is remitted to the First-tier Tribunal (not Judge Walters) for a full rehearing.

No anonymity direction is made

Signature

Judge of the Upper Tribunal

Dated