



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

Appeal Number: IA/14401/2013

**THE IMMIGRATION ACTS**

**Heard at Field House**

**On 9<sup>th</sup> October 2013  
Extempore**

**Determination  
Promulgated**

**On 21<sup>st</sup> October 2013**

**Before**

**UPPER TRIBUNAL JUDGE RINTOUL**

**Between**

**ALI SABAH ABDULSATTAR**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Miss Asanovic, Counsel, instructed by Duncan Lewis & Co  
For the Respondent: Mr Duthie, Home Office Presenting Officer

**DETERMINATION AND REASONS**

1. The appellant appeals with permission against the determination of First-tier Tribunal Judge O'Keeffe promulgated on 9<sup>th</sup> July 2013 in which she dismissed his appeal against the decision of the respondent to refuse to issue him with a residence card as confirmation of his right of residence as

the spouse of an EEA national exercising treaty rights in the United Kingdom.

2. The appellant's case is that he and his wife were married in Iraq on 1 April 2011 and that, as she is working here, he is entitled to a residence card as confirmation of his right of residence here as the spouse of an EEA national who is, in the terms of the Immigration (European Economic Area) Regulations 2006 ("the EEA regulations") a qualified person. The respondent refused his application on the basis that he was not lawfully married to his wife and that if he were, it was a marriage of convenience and so he was not, for the purposes of regulation 7 of the EEA Regulations a family member of an EEA national
3. The circumstances in which the appellant and his spouse arrived in the United Kingdom are set out in the refusal letter. There is no substantive challenge to the facts as set out there, nor is it in dispute that the appellant's wife is a qualified person, being a citizen of Germany who works part-time
4. When the matter came before the judge she heard evidence from a substantial number of witnesses who had been present at the wedding ceremony between the appellant and his wife. It was conceded at the hearing by the Secretary of State that the marriage had taken place but the respondent continued to argue that as a result of what had happened subsequent to that, in particular the appellant's illegal entry to the United Kingdom, that this marriage was one of convenience and therefore they were not married for the purposes of the EEA Regulations.
5. The judge refers in her determination to having heard the witnesses who gave evidence. They had been present at the ceremony on 1<sup>st</sup> April 2011 and she accepted that the appellant had been married on that occasion. She did however go on to conclude, setting out in considerable detail her reasons for doing so, that this was a marriage of convenience.
6. The appellant sought permission to appeal against that decision, contending that the judge had misunderstood the evidence and had failed to consider the fact that given that a substantial number of people had attended a large wedding involving a number of people, several of whom had travelled from across Europe to attend, or that this had occurred a substantial time before the appellant had sought to enter the United Kingdom, factors which should be taken into account in assessing whether this was a marriage of convenience or not. It is also considered in the second grounds of appeal that the judge failed to note oral evidence given by the appellant, his wife and father and brother-in-law.
7. Permission to appeal against that decision was granted by Senior Immigration Judge Storey on 23<sup>rd</sup> August who stated "It was arguable that the judge's findings that the marriage was one of convenience is difficult to square with his findings at paragraph 26 which appear to accept a marriage in Iraq in 2011".

8. When the matter came before me I heard submissions from both Miss Asanovic who appeared before the appellant and Mr Duffy who appeared for the Secretary of State. Mr Duffy quite properly conceded that to a considerable extent he was in difficulty given the judge's findings regarding the witnesses and the nature of the wedding and when it had taken place.
9. I am satisfied that for the reasons set out in the grounds of appeal the decision of Judge O'Keeffe did involve the making of an error of law in that she failed to take into account all relevant evidence in concluding that the marriage was one of convenience, attaching impermissible weight to the appellant's illegal entry.
10. For that reason I am satisfied that this was a material error. I therefore proceed remake the decision.
11. Having considered all the evidence before me and considering the evidence which had been accepted by Judge O'Keeffe, which goes to the fact that there was a large wedding which took place a considerable period before the appellant attempted to enter the United Kingdom albeit illegally, that in light of that and all the evidence of the witnesses which has not been the subject of any challenge before me, that I am satisfied on the balance of probabilities that the marriage is a proper marriage and was not one of convenience.
12. Accordingly and given it is accepted that the appellant's spouse is an EEA national exercising treaty rights here and therefore a qualified person, I allow the appeal. I also direct that in the circumstances the Secretary of State should issue to the appellant a residence card as confirmation of his right of residence in this country as the spouse of an EEA member exercising treaty rights pursuant to Regulations 7 and 17 of the EEA Regulations.

### **SUMMARY OF DECISION**

1. The determination of the First-tier Tribunal involved the making of an error of law and I set it aside.
2. I remake the determination by allowing the appeal under the EEA Regulations
3. I direct that the respondent issue the appellant with a residence card confirming his right of residence as the spouse of an EEA national who is a qualified person.

Signed

Date: 9 October 2013

Upper Tribunal Judge Rintoul

