Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/00944/2014

THE IMMIGRATION ACTS

Heard at Manchester	**Determination Promulgated**
On 1 October 2014	**On 3 October 2014**

Before

DEPUTY UPPER TRIBUNAL JUDGE PLIMMER

Between

SHAHID HUSSAIN

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Brown (Counsel)
For the Respondent: Mr McVitty (Home Office Presenting Officer)

DETERMINATION AND REASONS

1. The appellant is a citizen of Pakistan. He applied for a residence card on the basis of his claimed relationship with a Hungarian citizen under the Immigration (EEA) Regulations 2006. I shall refer to her as the sponsor.

2. The appellant appeals with permission against a decision of First-tier Tribunal Judge Lloyd-Smith dated 13 May 2014 in which his appeal against the refusal to grant a residence card was dismissed. Judge Lloyd-Smith made robust adverse findings against the appellant and

regarded his claimed relationship not to be genuine and subsisting.

3. In oral submissions before me Mr Brown focussed his attention on two matters. First, the Judge placed inappropriate weight on an interview that was uncertain and unclear. Second, the Judge failed to take into account letters from the sponsor's and the appellant's GPS.

Interview

4. Mr McVitty submitted that it was simply too late for Mr Brown to raise alleged defects in the interview at the hearing. There is no evidence that these alleged defects were drawn to the attention of the Judge. No effort was made to obtain a witness statement from the appellant's representative at the hearing to address this issue. More importantly, the grounds of appeal make no reference whatsoever to the interview or any procedural unfairness said to arise from the interview. When granting permission to appeal Judge Osbourne made no reference to the interview. I agree with Mr McVitty that it is too late to seek to amend the grounds of appeal for the reasons he has outlined.

5. In any event, in my judgment the submission that the Judge failed to consider defects in the interview is bound to fail. I was not provided with any clear indication of what was defective about the interview. The decision letter states that a language test was carried out and found that the appellant and sponsor were unable to converse effectively in the sole language they claimed to share – English. That this is correct is obvious from the very first question the appellant is invited to ask the sponsor. This continues until question 2D when the appellant accepts they have failed to communicate about the very basic matter of which interests they share. The Judge was entitled to agree with the respondent's submissions on the difficulty the couple had in understanding each other [16(a), 17]. This is manifestly clear from the interview record.

GPs' letters

6. Mr Brown submitted that the Judge failed to take into account relevant material evidence from the parties respective GPs. These state that the appellant / sponsor respectively "*has asked for a letter stating [he/she] has been trying to conceive for a child for the last 1 year with [his/her] current partner but to no avail*". Although the Judge has not specifically referred to these letters it is clear that she has considered all the relevant evidence in the round. She is not required to set out every single item of evidence within the appellant's bundle.

7. In any event the letters from the GP cannot be said to be material cogent evidence. They support the proposition that the appellant and sponsor each asked for a letter to state that they had been trying to conceive. They do not state that they actually were trying to conceive

or attach any medical records to corroborate the relationship as claimed.

Other grounds

8. The grounds of appeal really do no more than disagree with a determination that is clearly reasoned. For the avoidance of doubt the Judge was entitled to attach weight to the difficulties in communication between the parties. This was a relevant factor for her to consider in the round.

9. I do not accept that the Judge has failed to take into account cultural sensitivities. The Judge was entitled to conclude that the parties simply could not communicate with each other adequately to engage in phone conversations as claimed.

10. Although the Judge might have been clearer on the status of the relationship being relied upon for the purposes of the EEA Regulations, I am satisfied that the Judge was well aware that the parties were married in a Muslim ceremony but not in accordance with English law. The real question for her was whether they were in a relationship that was durable. Although the Judge could have applied her findings more clearly to the language of Regulation 8 of the EEA Regulations it is very clear that she did not regard them to be in a durable relationship.

11. Finally, Mr Brown conceded that if he was unable to identify an error of law regarding the findings on the durability of the relationship then he could not rely upon Article 8 of the ECHR and the issue of whether or not the sponsor was exercising Treaty rights becomes irrelevant.

Decision

12. The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.

13. I do not set aside the decision.

Signed:

Ms M. Plimmer
Deputy Judge of the Upper Tribunal

Date:
1 October 2014