



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

Appeal Number: IA/31161/2013

THE IMMIGRATION ACTS

**Heard at Field House
On 5 September 2014**

**Determination
Promulgated
On 11 September 2014**

Before

DEPUTY JUDGE OF THE UPPER TRIBUNAL CHANA

Between

**MR MUHAMMAD RAFIQUE
(ANONYMITY DIRECTION NOT MADE)
Appellant**

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation

For the appellant: No appearance

For the respondent: Mr Kandola, Senior Presenting Officer

DECISION AND DIRECTIONS

1. The appellant is a citizen of Pakistan who appealed to the First-tier Tribunal against the decision of the respondent dated 1 November 2013 refusing to grant him a Residence Card as confirmation of his right of residence as the spouse of an EEA national exercising her treaty rights in the United Kingdom pursuant to regulation 6, 7 and 8 of

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the Immigration (European Economic Area) Regulations 2006 (*hereinafter the 2006 Regulations*).

2. First-tier Tribunal Judge Herlihy dismissed the appellant's appeal and found that the appellant's marriage was one of convenience. First-tier Tribunal Judge PJM Hollingworth granted the appellant permission to appeal stating that the First-tier Judge made an arguable error of law in relation to the burden and standard of proof in his analysis of the totality of the evidence given that the appeal was decided on the papers and not after an oral hearing.
3. Thus the appeal came before me.
4. The First-tier Tribunal Judge made the following findings.
 - i. The evidence is that the appellant and his EEA national married on 18 November 2012 in the United Kingdom. The respondent doubts that the marriage is genuine and relies upon a marriage interview conducted with the appellant and his wife on 24 May 2013 and acknowledges that whilst the appellant and his wife know each other and elements of each other's life finds that there were occasions when questioned during their interview about their relationship that the parties were unable to provide consistent answers when recalling basic, sometimes recent events and moments in their life together.
 - ii. There are discrepancies in the transcript of the interview between the appellant and his sponsor.
 - iii. There is a paucity of evidence submitted by the appellant to test the parties' relationship. There are no photographs other than their wedding photographs or any statements from their friends and relations to confirm the existence of their relationship. The appellant only mentions two of his wife's friends and his wife is unable to state the appellant's brother's full name saying that he is also called Muhammad as is the appellant, whom she calls Rafique partly because "there are so many Muhammad's". It is not credible that the appellant's wife would not know the name of the appellant's brother who attended their wedding who he says is called Anis or be unable to name the appellant's friends who also attended their wedding. It is striking that the only friends of the appellant's wife who attended their wedding other than two friends that she and the appellant have in common; Adams and Alinas.
 - iv. There are further discrepancies in the answers given to questions relating to accommodation which the appellant and his wife share. It is not credible that the appellant would not know when or how the appellant told his parents of his plans to marry given

the implications of such a decision such as his desire to seek to remain in the United Kingdom and the cultural/familial significance of marriage within Pakistani society.

- v. On the totality of the evidence and noting the lack of any satisfactory objective evidence of the claimed relationship which it is reasonable to assume that the appellant could have provided but failed to do, the parties have not demonstrated that they have entered into a genuine marriage and find that the marriage is one of convenience.
5. The grounds of appeal state the following which I summarise. The first ground of appeal is that the Judge at paragraph 4.2 stated that the burden is upon the appellant and that the standard of proof is on a balance of probabilities and that the appellant has to prove that the decision of the respondent was not in accordance with the law. The Judge materially erred in law by not setting out the correct burden of proof in marriages of convenience under the EEA regulations. Had the Judge used the correct formulation and burden of proof, he may have noticed the problem in his findings of the respondent's evidence, instead of apparently accepting them without scrutiny.
 6. The second ground of appeal is that the Judge made mistakes of fact in his determination. The problem lay in the Judge's interpretation of the answers and there was no material discrepancies between the appellant and the sponsor's evidence at the interview.
 7. Other errors in the determination were that the Judge expected that there should be correspondence between the parties without taking into account that they met in London and have lived together and there would be no need to send letters to each other. The Judge also misunderstood the evidence in his finding at paragraph 57 that the appellant said he has two brothers in the United Kingdom whereas, the sponsor said that he had only one brother. At question 100, they both said that the sponsor has two brothers. The Judge by failing to consider the evidence failing to a material error of law.
 8. Before the hearing I received a faxed letter from the appellant's representative, MA Consultants asking that the appeal be decided on the papers as their clients current financial circumstances do not permit him to instruct them to appoint a counsel to represent him at the hearing.

The hearing

9. I heard submissions from the senior presenting officer. He argued that the answers given by the appellant and his sponsor in the interview record were clearly contradictory which the Judge took into account as set out in his determination. In respect of the discrepancies, it was argued that there were at least 20 different discrepancies at the

interview between the appellant and his sponsor. He submitted that even if there was an error in setting out the correct burden of proof, it was not material because the outcome of the appeal would not be different.

Decision on error of law

10. The first complaint made against the Judge is that he failed to set out the correct burden and standard of proof in his determination. Paragraph 4.2 of the determination it is recorded “The burden of proof lies upon the appellant and the standard of proof is on the balance of probabilities and the appellant has to prove to that standard that the decision of the respondent was not in accordance with the law and the relevant Immigration Rules.
11. In the case of **Papajorgi (EEA spouse-marriage of convenience) Greece [2012] UKUT 00038 (IAC)**, it was made clear that there is now burden at the outset of an application on the claimant to demonstrate that marriage to an EEA national is not one of convenience. In the case of **IS (marriage of convenience) Serbia [2008] UKAIT 31**, establishes only that there is an evidential burden on the claimant to address evidence justifying reasonable suspicion that the marriage is entered into for the predominant purposes of securing residence rights.
12. There is clearly an error of law in the determination by the Judge’s failure to set out in his determination upon whom the burden falls and the standard of proof required. It is trite law that the burden is on the respondent to prove that they have a reasonable suspicion that the marriage is one of convenience. The burden then shifts to the appellant to demonstrate that his is not a marriage of convenience.
13. The Senior Presenting Officer in the submissions argued that the error was not material because the Judge clearly understood that the burden was on the respondent which had been proved by providing the interview record of the appellant and his sponsor in which there were at least 20 discrepancies as listed in the refusal letter.
14. The respondent in their refusal letter clearly set out the discrepancies in the evidence of the appellant and his sponsor at the interview record. The Judge clearly took these discrepancies into account as the respondent having satisfied the suspicion that the marriage was one of convenience.
15. On the full reading of the determination, it is implicit that the Judge found that the respondent had demonstrated that the discrepancies in the evidence of the appellant and his sponsor at their interviews, raised a suspicion, that the marriage was one of convenience and the

respondent had thereby satisfied her burden of proof. In the determination the Judge finds that the appellant has not provided evidence which rebuts the respondent's suspicion that his marriage was not one of convenience.

16. Therefore, although there was an error of law in the determination but I find it was not material in this appeal. Considering all the evidence in the appeal, the decision would remain the same given the inconsistencies in the appellant's and sponsor's interview record. I therefore find the first ground of appeal has no merit.
17. In respect of the second ground of appeal that the judge did not consider the evidence judiciously is no more than a quarrel with the findings of the Judge on the evidence. The Judge took into account the many discrepancies in the interview record of the sponsor and the appellant. The respondent's refusal letter sets out about 20 discrepancies in the interview record.
18. The grounds of appeal set out a few discrepancies which they claim were not inconsistent but these explanations do not indicate that the appellant and his sponsor were consistent in all their answers. At paragraph 5.7, the Judge clearly sets out some of the answers given by the sponsor such as why she calls the appellant Rafique instead of his name Muhammad because as the sponsor said "there are so many Muhammad's". The Judge also points out that the appellant did not know the name of the brother who attended their wedding, amongst other discrepancies.
19. The Judge was entitled to find on the evidence before him that the appellant's marriage is one of convenience and there is no material error of law in those findings. The Judge was entitled to find that the appellant did not meet the requirements of the 2006 Regulations.
20. I conclude for the above reasons that the First-tier Judge did not material err in law and I uphold his determination.

Decision

The appellant's appeal is dismissed

Signed by

Mrs S Chana

A Deputy Judge of the Upper Tribunal
September 2014

Dated this 10th day of

