



UPPER TRIBUNAL
(IMMIGRATION AND ASYLUM CHAMBER)

APPEAL NUMBER: IA/02787/2015

THE IMMIGRATION ACTS

Heard at: Field House
on 14 October 2015

Decision and Reasons Promulgated
on 30 October 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE MAILER

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MR MUHAMMAD WASEEM
NO ANONYMITY DIRECTION MADE

Respondent

Representation

For the Appellant: Mr S Kandola, Senior Home Office Presenting Officer
For the Respondent: Mr C Mannan, counsel (instructed by Bukhari Chambers Solicitors)

DETERMINATION AND REASONS

1. For the sake of convenience I shall refer to the appellant as “the secretary of state” and to the respondent as “the claimant.”
2. The secretary of state appeals with permission against the decision of First-tier Tribunal Judge Carlin who allowed the claimant’s appeal against the secretary of

state's refusal to issue a residence card pursuant to the Immigration (EEA) Regulations 2006 ("the 2006 Regulations"). The issue on appeal was whether the marriage of the claimant to Ms Ewa Jach, a Polish national, was one of convenience [1].

3. Judge Carlin considered the interviews conducted with the claimant and Ms Jach on 5 December 2014. On behalf of the secretary of state it was contended that there were inconsistencies indicating that the marriage was one of convenience. There were 305 questions in all. The questions which the secretary of state contended produced inconsistent answers were highlighted in the transcript. A copy of the whole transcript was produced.
4. Judge Carlin has set out from [11-27] his findings regarding the asserted inconsistencies. In assessing the interviews generally, he also noted that their relationship had not been a long one in that they had met on 26 April 2014. As at the date of the interviews, they had only known each other for about seven months. He therefore 'felt' that it was likely in the circumstances that there would be some inconsistencies in the answers they gave. However, the fact that the relationship was not lengthy did not "necessarily mean" that the marriage was one of convenience [10].
5. On 4 August 2015, First-tier Tribunal Judge Plumptre granted the secretary of state permission to appeal. It may be arguable that the Judge gave insufficient or inadequate reasons for some of the findings such as set out at paragraph 17 where he failed to specify what information the appellant provided to support the finding that the inconsistency in question was not significant.
6. Whilst some of Judge Carlin's reasons for finding no inconsistencies in the marriage interviews are adequate, Judge Plumptre stated that it may be arguable that a number are not, and that little or no attempt was made in paragraphs 11-28 of the decision to state why adequate reasons for finding the appellant to be consistent or to provide adequate reasons as to why the inconsistencies were not significant.
7. Mr Kandola relied on the grounds seeking permission and in particular the reliance by secretary of state on the decision in Budhathoki (reasons for decisions) [2014] UKUT 00341 (IAC) at [14]. There the Tribunal stated that:

"We are not for a moment suggesting that judgments have to set out the entire interstices of the evidence presented or analyse every nuance between the parties. Far from it. Indeed, we should make it clear that it is generally unnecessary, unhelpful and unhealthy for First-tier Tribunal judgments to seek to rehearse every detail or issue raised in the case. This leads to judgments becoming overly long and confused. Further, it is not a proportionate approach to decide in cases. It is, however, necessary for First-tier Tribunal judges to identify and resolve the key conflicts in the evidence and explain in clear and brief terms their reasons for preferring one case to the other so that the parties can understand why they have won or lost."
8. In reliance on that authority Mr Kandola submitted that from paragraphs 11 to 28, the Judge did not give adequate reasons as to why the answers given at interview

were either not consistent or if they were, why they were not significant. It was "material" that the Judge must provide adequate reasons for finding the claimant to be consistent or that the asserted inconsistencies were not significant.

9. Mr Kandola noted that the Judge in most instances was not of the view or "did not feel" that the inconsistencies were significant. He referred by way of example to [17-18] where the Judge simply asserted that he did not feel that there was any inconsistency in the answers to question 180, especially given the information provided by the claimant when answering 'the following question'.
10. He submitted that from question 180 and following of the interview, questions were asked about the sponsor's work. The question asked was where the sponsor would be working "tomorrow". The recorded answer by the claimant is "yes, she will go there and take to the site". The sponsor however answered "MacDonald's". The Judge however noted that the interviewer asked at question 181 what "site" the sponsor worked on. There the claimant answered "...she do KFC MacDonald's and Burger King and this type of cleaning."
11. Mr Kandola also submitted by way of example that the finding that the inconsistency in question 176 was not significant was simply an assertion without any reasoning. There the parties were asked where the sponsor collected her wages last week. The claimant's response is recorded as "When she went to job. Ali house definitely don't go into ask where you were when he gave you money. I don't go more into exactly. He definitely paid in Ali house. He definitely paid there."
12. The sponsor however stated the Reading Burger House on Sunday. (During his submissions in this respect Mr Nasim referred to question 166 where the sponsor referred to "Mr Ali, my boss", the same answer given by the claimant to the question as to where the sponsor went "ask" about the job).
13. Mr Kandola submitted that the Judge mostly dismissed any assertions as to inconsistencies "out of hand without reasons."
14. On behalf of the claimant, Mr Mannon who did not represent the claimant before the First-tier tribunal, submitted that when examining the secretary of state's contentions relating to the answers given at the interview, the background to the decision referred to earlier by the Judge is important. The Judge noted that the claimant was cross examined almost entirely on the answers given at the interview which were said to be inconsistent. The transcript of the interview had only been delivered late and the claimant had been prejudiced by the late delivery. In the circumstances, he allowed the claimant's representative to conduct a re-examination on issues which should have been raised by an examination in chief.
15. Mr Mannon submitted that the secretary of state in the reasons for refusal letter identified seven instances of alleged inconsistencies. Those are set out at page 1 of the reasons for refusal letter.

16. Moreover, the Judge had regard to the contextual background as set out in the evidence contained in the claimant's witness statement at paragraph 4, namely, that he and his sponsor decided to marry and there was an initial appointment with the registry office on 21 August 2014. The ceremony did not go ahead that day as immigration officers interrupted the ceremony and thereafter conducted a three and a half hour "surprised interview". Accordingly the ceremony was cancelled as the interview took so long.
17. It was further asserted (at paragraph 5 of his statement) that at the end of the interview, the immigration officers said that they were satisfied that "we were a genuine couple and allowed us to get married." However, they had to re-book the marriage for 27 August 2014.
18. The interview on 21 August 2014 was apparently not recorded. Nor did the Home Office refer to or rely on that interview. The Judge only had the interview record of 5 December 2014. The interview record had been delivered so late 'and accordingly prejudiced the claimant'.
19. With regard to the findings from [10] onwards, the Judge had heard the evidence of the claimant and his sponsor.
20. He submitted that the answers referred to [11] regarding questions 17-19 were properly found by the Judge to be broadly consistent. Both the claimant and the sponsor identified the name of her child. The sponsor could not remember the exact date of her son's birth but gave it as 20 September 2009. In fact it was 6 September 2009.
21. Mr Mannan also pointed out that it is evident from the interview that the exact answers were not fully recorded.
22. The answers to questions 42-44 relating to where and with whom the claimant's mother lives in Pakistan showed sufficient knowledge. The inconsistency as to how many family members were involved was a matter of degree. The sponsor did note that the mother lived with the children.
23. Moreover, the names of the claimant's other siblings were identified by the sponsor in full. She was also able to identify the "eldest sibling."
24. Nor was there any inconsistency between their answers given regarding the contract in respect of the claimant's phones. The sponsor stated that one was "a top up", whereas the claimant stated that one was "pay as you go." Both however were able to give the claimant's mobile number (question 48).
25. With regard to the reply as to where the sponsor picks up her wages (question 175-176) Mr Mannan submitted that the Home Office representative could have cross examined the claimant, but did not, with regard to the answer that he gave, namely that she collected her wages in "Ali house." As noted, Ali was her employer.

26. Mr Mannan also submitted that the secretary of state should have amended the "grounds" in the refusal letter as only a few inconsistencies had been referred to, and not the large amount relied on at the hearing.
27. He accordingly submitted that having considered the evidence as a whole, the findings by the Judge were sustainable.
28. In response, Mr Kandola submitted that some of the replies revealed that there was a lack of knowledge as to the sponsor's circumstances, which is not the same thing as an inconsistency. He referred to questions 250 to 255 with regard to any loans that the claimant had. Whereas his wife stated that he did not have any, he stated that he had some loans, taken out a year before, but had not told his wife.
29. At question 168-169 although the sponsor had referred to Mr Ali as her boss, she was unable to give his first name and said "this difficult for me."
30. With regard to questions as to whether the claimant observed Ramadan, he replied "no" but his sponsor said "yes but he not pray." Both however stated that he had not attended a mosque since she has known him. With regard to the question when he observed Ramadan, she stated that she does not remember, but it was June or July in the summer.
31. In that respect, Mr Mannan referred to the claimant's witness statement paragraph 10, page 7, where the claimant stated that although he does not actually keep Ramadan himself, he used to join the "older tenants who were following Ramadan" for meals in the evening. That is why she might have thought that he did observe it. That evidence was before the Judge.
32. Mr Kandola also submitted that the answers to questions regarding where the claimant studied on coming to the UK, namely the Oxford College of London, revealed that this was not known by the sponsor. However, she stated that it had something to do with "accountant London somewhere college." He stated that his course was business management or strategic management. This Mr Kandola submitted constituted a degree of vagueness as well.
33. He submitted that the Judge had accordingly failed properly to engage with the answers given at the interview.
34. In his response, Mr Mannan submitted that after Mr Kandola's concession as to the sufficiency of some of the answers, there were only 15 remaining paragraphs. He pointed out that the claimant's bundle had 21 documents, amounting to 122 pages in all, including the tenancy agreement, proof of cohabitation, the claimant's wife's employment letter, her wage slips, their joint bank statements as well as proof of cohabitation at pages 82-122. There were separate bank accounts showing that the claimant and his wife had the same address.
35. he submitted that in coming to his conclusions, the Judge clearly had in mind both the claimant's and the secretary of state's bundles The Judge went to the trouble in

allowing the secretary of state to flag up additional inconsistencies to those relied on in the reasons for refusal. The Judge was obliged to consider the interview record as a whole, which he has appropriately done.

Assessment

36. The Judge had regard to the decision of the Upper Tribunal in Papajorgji (EEA Spouse - Marriage of Convenience) Greece [2012] UKUT 00038. There is no burden on the claimant in an application for a family permit to establish that she was not party to a marriage of convenience unless the circumstances known to the decision maker give reasonable ground for suspecting that this was the case. Absent such a basis for suspicion, the application should be granted without more on production of the documents set out in Article 10 of the Directive. Where there is such suspicion, the matter requires further investigation and the claimant should be invited to respond to the basis of suspicion by producing evidential material to dispel it.
37. A marriage of convenience in this context is a marriage contracted for the sole or decisive purpose of gaining admission to the host state. A durable marriage with children and cohabitation is quite inconsistent with such a definition.
38. The Upper Tribunal in IS (Marriages of Convenience) Serbia [2008] UKAIT 0031 confirmed that the burden of proving that a marriage is not a marriage of convenience for the purpose of the 2006 Regulations rests on the appellant. He is not required to discharge it in the absence of evidence of matters supporting a suspicion that the marriage is one of convenience. There is an evidential burden on the respondent in that regard. The standard of proof which applies is the balance of probabilities.
39. As is clear from Papajorgji, the question for the Judge will therefore be “in the light of the totality of the information before me, including the assessment of the claimant's answers and any information provided, am I satisfied that it is more probable than not that this is a marriage of convenience”?
40. The First-tier Tribunal had to be satisfied, having regard to the evidence as a whole, that the claimant had shown to the required standard that his marriage was not entered into for the sole reason of securing a right to reside in the UK.
41. In that respect, Judge Carlin had regard to the claimant's bundle containing the documentation relied on in support of the evidence of their cohabitation. He also considered their witness statements and their oral evidence in support of the claim.
42. In that respect, the claimant stated that he met his wife at the end of April 2014. The relationship took off from there. She moved in with him in May 2014 at their address in High Wycombe where they have been living together ever since.
43. They decided to marry and the initial appointment with the registry was, as already noted, on 21 August 2014. However, it could not go ahead as immigration officers interrupted the ceremony and interviewed them for a lengthy period. The claimant

and the sponsor asserted that the officers were satisfied on that occasion that they were a genuine couple and "allowed us to get married." They however had to re-book the marriage for 27 August 2014.

44. The interview that took place on 21 August 2014 was not produced. However, the assertion by the claimant and his sponsor that such a lengthy interview was conducted that day has not been disputed. Nor was their assertion disputed as to the existence of a written transcript of that interview.
45. In their witness statements, the claimant and his sponsor confirmed that there were some differences in their replies but contended that these are normal in any couple's marriage. He had been in a relationship for about seven months and some details and information about each other may still not have been fully known.
46. He explained the reference to his wife's loan in Poland where she is required to pay a monthly maintenance towards her child's expenses. However, this is not a loan. As far as his own loan is concerned he is repaying it on a monthly basis after having taken out an overdraft.
47. He has also dealt with the questions raised concerning Ramadan.
48. The evidence by way of documentation corroborating the assertions of cohabitation was produced from pages 24-122 of the claimant's bundle. This contained documentation such as individual bank statements as well as joint account bank statements sent to the same address. In addition, there are letters produced by his sponsor from her employer, her pay slips as well as tax reference and NI number all of which are sent to the same address. The joint tenancy, which commenced on 11 May 2014, was also produced.
49. Knowledge about each other's day to day activity, including what each had for breakfast on a particular day, was found by the Judge not to be significant. Nor did he find the answers given in respect of the religion to constitute an important issue.
50. I accept Mr Kandola's contention that the Judge might have given more detailed reasons for the conclusions reached. However, I have had regard to the interview records sheet. It is now accepted that the answers to questions 17-19 were broadly consistent.
51. As to the persons living with the claimant's mother in Pakistan, the sponsor was aware that she lived with "kids". She identified two brothers and two sisters. More significantly, she gave the name of his siblings in reply to question 46. The use of the word "top up" as opposed to "pay as you go" did not appear to be a significant discrepancy.
52. At question 104, they were asked with whom the sponsor had been living before moving in with the claimant. He identified her friend, Anieska, whom his sponsor also identified and included a person, Nedim, the latter's boyfriend. It is evident that those responses were broadly consistent as found by the Judge.

53. The fact that the claimant did not know the first name of Mr Ali, the sponsor's boss, which he claimed was "difficult for her" did not constitute a significant inconsistency or the evidence of a lack of knowledge which she would be bound to know.
54. Nor did the Judge find the answer by the claimant that his wife went to collect wages in the past week from Ali's house as opposed to from the Reading Burger King on Sunday, to be significant. Given that the parties had identified Mr Ali as an employer, the exact place of the payment of wages a week before was not deemed to be significant [16]. The Judge stated that many married couples will not know or recall detail of this nature.
55. During the interview the claimant has stated that his family still send him money. Both stated that such money had been sent recently (question 234-235). The amount of £1,000 was identified by each of them as the amount sent. Both said this related to expenses - "he must pay rent." The amount of rent was £400 a month and this consistent answer was given by both. The identity of the claimant's brother, Ahmed, was given by the sponsor as well.
56. When they were asked when and where they spent their first night together, both stated that it was on 11 May. Both gave the same address. Both stated that they had breakfast together. He stated that he had cornflakes and that his wife had cornflakes. However, she referred to having eaten boiled eggs. As noted by the Judge at [24], what their partner had for breakfast on a particular day some six months prior to the interview cannot reasonably be expected to be remembered.
57. With regard to [25-27] of the determination, although the Judge might have more fully set out the basis for finding no significant inconsistency, it appears from an assessment of their answers that they were being expected to know what they did for the rest of the day some six months ago. Both said that they went to town. He stated that they went to different branches and not the main shops. She stated that they went to town "to eating". Both stated that food was obtained from MacDonald's. Again, the Judge was justified in finding that any inconsistency (if indeed there was) was not significant.
58. Finally, when asked about the last gift the claimant purchased for the sponsor, he said he gave her an iPhone before they got married. She said he gave her flowers on Thursday. The Judge was justified in finding that the sponsor did not reveal a significant inconsistency. It was certainly not contradictory. She regarded the purchase of flowers for her recently as a gift, whereas he understood the question to refer to something more substantial, namely a phone which he purchased for her prior to marriage.
59. Nor was there any significant inconsistency with regard to the answers given to question 305 where the claimant stated that he did not see his wife send her son a gift on his birthday, whereas she said she sent money to her mother, telling her to buy him Lego.

60. I have also had regard to the Judge's comments at [28]. There he said that he has indicated that an inconsistency is not significant where he does not indicate that the marriage is one of convenience. He stated that after considering the interviews overall, he was of the view that the secretary of state had ignored answers that were consistent. He noted that the apparent inconsistencies were the only reason why it was asserted by the secretary of state that the marriage was one of convenience. Accordingly, the secretary of state had not satisfied the evidential burden.
61. He went on to find that in any event the claimant had showed on the balance of probabilities that the marriage was not one of convenience, having regard to the "weight of documentation" indicating that the relationship between them was genuine and subsisting. It took account of all the documentation to which I have referred, all of which tends to show that the marriage is not one of convenience [29].
62. The Judge found that there had been continuous cohabitation both before and after the marriage which has endured. They had continued cohabiting as husband and wife.
63. In the circumstances, there was a proper basis, having regard to the evidence as a whole, for the finding that the secretary of state had not shown to the required standard that the marriage was one of convenience.
64. In any event, even if the burden had switched to the claimant to show that the marriage was on the balance of probabilities not one of convenience, the Judge had regard to the weight of evidence and documentation which showed that the marriage was indeed not one of convenience. Those findings were properly available to the Judge.

Notice of Decision

The decision of the First-tier Tribunal did not involve the making of any material error on a point of law. It shall accordingly stand.

No anonymity direction is made.

Signed Deputy Upper Tribunal Judge Mailer
Date: 28 October 2015