



IAC-FH-NL-V1

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

Appeal Numbers: IA/06754/2015
IA/07088/2015

THE IMMIGRATION ACTS

Heard at Field House

**Decision &
Promulgated**

Reasons

On 15 April 2016

On 27 April 2016

Before

DEPUTY UPPER TRIBUNAL JUDGE CHANA

Between

**MR FAZAL USMAN
MRS LEILA ISSAKOVA
(ANONYMITY DIRECTION NOT MADE)**

Appellants

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Mr A Joseph, Counsel instructed by Adam Khattak
For the Respondent: Mr T Melvin. Home Office Presenting Officer

DECISION AND REASONS

1. The appellant in this appeal is the Secretary of State for the Home Department. The respondents are citizen of Pakistan and Estonia born on 12 April 1985 and 16 August 1985 respectively. I shall however for the sake of convenience continue to refer to the parties as they were referred to before the First-tier Tribunal.

2. The appellant's appealed against a decision of the respondent dated 16 February 2015 to refuse to issue the first appellant with an EEA residence card as the spouse of an EEA national exercising her treaty rights in the United Kingdom under Regulation 7 of the Immigration (European Economic Area) Regulations 2006 (hereinafter the 2006 Regulations). [The second appellant] appealed against a decision of the respondent dated 16 February 2015 to remove her from the United Kingdom.
3. First-tier Tribunal Judge Jackson allowed the appellant's appeal in a decision dated 27 August 2015. The respondent made an application for permission to appeal which was granted by Designated Judge of the First-tier Tribunal who found that it is arguably unclear as to why the judge went on to find on the balance of probabilities that the marriage was not one of convenience and therefore it is arguable that the conclusion to allow the appeals were perverse and irrational and granted permission.
4. The First-tier Tribunal Judge considered the evidence and her findings start at paragraph 32 of the decision. The judge sets out the discrepancies in the evidence of the first and second appellant in their interview which did raise a reasonable suspicion that this marriage is one of convenience and therefore, said quite correctly, that once the respondent has produced evidence that goes to show that the marriage is one of convenience, the burden of proof then shifts to the appellants to show that it is not. The judge went on to state that certain discrepancies in the interview can be explained and at paragraph 42 of the decision, went on to consider the discrepancies which have not been rebutted or explained by the appellants.
5. At paragraph 43 the judge states that in the refusal letter the respondent clearly identified sufficient material to call into question whether this was a marriage of convenience given the lack of consistency in the answers given as to the couple's relationship. The judge stated that "it is reasonable to expect that a genuine marriage not solely for the purposes of obtaining an immigration advantage would have included a much higher degree of consistency in answers about key points in a person's relationship".
6. The judge noted that the appellants have not adequately addressed all the discrepancies highlighted by the respondent but taking into account all the evidence available, the judge did not find on a balance of probabilities, even taking into account the first appellant's immigration history, that he had no leave to remain in the United Kingdom (having already failed in a previous application and having been served with a decision to remove him) that the inconsistencies are sufficient to establish that this was a marriage of convenience. The judge then continues, somewhat in a contradictory fashion:

"The discrepancies in the interview raise serious doubts as to the genuineness and subsistence of the marriage despite the assured shorthold tenancy agreement showing that the appellants are

cohabiting, but this is not the same question as to whether it was a marriage purely to obtain a benefit for the first appellant to reside in the United Kingdom.”

The judge then goes on to say that the evidence is not in his view strong enough to reach that conclusion on the balance of probabilities and allowed the first appellant’s appeal against the refusal of the respondent to issue him with an EEA residence card. Having allowed the first appellant’s appeal, the judge stated that the second appellant’s appeal against the decision to remove her is allowed for the same reasons because it has not been established that she entered into a marriage of convenience.

7. The respondent’s grounds of appeal stated that the judge has failed to give adequate reasons for findings on a material matter. The judge noted that the Secretary of State clearly identified sufficient material to establish reasonable suspicion and call into question whether the marriage is one of convenience. As such it is clear that the judge accepted that the Secretary of State had discharged her burden by justifying reasonable suspicion on the basis of inconsistencies and discrepancies in the couple’s marriage interview thereby causing credibility concerns. Having established reasonable suspicion that the respondent states that it is for the appellant to discharge the burden of proof and demonstrate the marriage was not one of convenience.
8. At the hearing I heard submissions from both Counsel as to whether there is an error of law in the determination. Mr Melvin relied on his grounds of appeal and stated that in pursuance of Mr Macdonald the permission Judge who said that it was entirely unclear why the judge allowed the appeal after having made adverse credibility findings and finding that there were serious discrepancies in the evidence between the two appellants in the interview. The judge failed to give adequate reasons for her conclusion that the marriage is not one of convenience having had set out all the discrepancies in the evidence and it is a perverse and irrational finding under the circumstances.
9. Mr Joseph in his submissions stated that the judge was correct in the definition of what is a marriage of convenience as set out at paragraph 43. He stated that the question that the judge asked herself at paragraph 43 is that while the discrepancies in the interview raised serious doubts as to the genuineness and subsistence of the marriage, despite the assured shorthold tenancy agreement showing the appellants are cohabiting, but this is not the same question as to whether it was a marriage purely to obtain a benefit for the first appellant to reside in the United Kingdom. The evidence is not in my view strong enough to reach a conclusion on the balance of probabilities.

Findings as to whether there is an error of law in the determination

10. The judge having found that there are many inconsistencies in the evidence of the appellants in their asylum interview which the judge has set out from paragraph 35 to 43 the judge, nevertheless found that on a balance of probabilities the respondent has not proved that this is a marriage of convenience. The burden of proof in a marriage of convenience case is upon the respondent. The respondent demonstrated sufficient indicia and suspicion that the appellant's marriage was one of convenience, relied on the interview record and the inconsistencies in the evidence discharged her burden of proof. The burden of proof then shifted to the appellant to show that it is not a marriage of convenience. Nowhere in the determination does the judge state what evidence the appellant relied upon as to rebut the respondent's case that this is a marriage of convenience. Having set out all the discrepancies and having raised serious doubts in the determination as to the genuineness and subsistence of the marriage, the judge in total perversity allowed the appeal and said that this was not a marriage of convenience. It is most unclear to me as to the judge's definition of a marriage of convenience set out at paragraph 43. I do not understand the judge's reasoning in this regard.
11. I therefore set aside the determination as it is vitiated by material error of law. I remake the decision and I find that the respondent has demonstrated that the first appellant has entered into a marriage of convenience with the second appellant. The appellant has not demonstrated that theirs is not a marriage of convenience. The inconsistencies in their interview are sufficient to show that the marriage is fiction and not a reality. The appellants have not given a credible reason for all the inconsistencies in the evidence. I find that if two people are in a genuine and subsisting relationship, they would not give inconsistent accounts about some fundamental matters pertaining to their relationship. I endorse the judge's finding at paragraph 43 when he said "it is reasonable to expect that a genuine marriage not solely for the purposes of obtaining an immigration advantage would have included a much higher degree of consistency in answers about key points in a person's relationship". It follows therefore that the appellants' marriage is one of convenience.
12. I make this finding without having regard to the appellant's immigration history which further strengthens my conclusion. The appellant's application came after all attempts to live in this country had failed. I find this purported relationship is an attempt for the appellant to continue to live in this country.
13. In this regard the second appellant's appeal to remove her from this country is also dismissed. Both Appeals are dismissed.

Notice of Decision

The appeals are dismissed pursuant to the 2006 Regulations

No anonymity direction is made.

Signed

Date 26th day of April 2016

Deputy Upper Tribunal Judge Chana

I have dismissed the appeal and therefore there can be no fee award.

Signed

Date 26th day of April 2016

Deputy Upper Tribunal Judge Chana