IAC-FH-NL-V1

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/11516/2015

THE IMMIGRATION ACTS

Heard at Stoke	**Decision & Reasons Promulgated**
On 18 March 2016	**On 18 April 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAMBERLAIN

Between

ISSIFU SHAIBU
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr. T. D. H. Hodson, Elder Rahimi Solicitors
For the Respondent: Mr. A. McVeety, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge Gurung-Thapa, promulgated on 7 September 2015, in which she dismissed the Appellant's appeal against the Respondent's decision to refuse to grant a residence card as confirmation of his right to reside in the United Kingdom under the Immigration (European Economic Area) Regulations 2006 (the "Regulations").

2. Permission to appeal was granted as follows:

> "It is arguable as asserted the FtTJ erred in exceeding the respondent's case by admitting a new issue, it first being raised in closing submissions. Namely, by the respondent, whether the appellant had been exercising Treaty rights in the UK. The FtTJ notes he considered whether to adjourn but did not, noting that the appellant's representative did not seek any adjournment. It is arguable that caused such unfairness that this amounted to a procedural error."

3. The Appellant and Sponsor attended the hearing. I heard oral submissions from both representatives, following which I reserved my decision.

Error of law

4. The judge also dismissed the Appellant's appeal on the basis that she found that the Appellant's marriage was a marriage of convenience. Grounds three to five address this issue. Therefore in order for this appeal to succeed, the Appellant must show that any error of law in considering the exercise of Treaty rights was material, and must therefore show that there was also an error of law in her consideration of the issue of marriage of convenience.

5. The judge addressed this issue in paragraphs [21] to [50]. She found many discrepancies in the evidence of the Appellant and Sponsor. In paragraph [35] she did not accept that they had been cohabiting as claimed. She did not accept the explanation given in relation to the issue of the wardrobes, [36] to [38]. In paragraph [39] she found that there were contradictions in the evidence for why the Sponsor was not at the matrimonial address on the day of the visit. In paragraph [40] she rejected the explanation given for the problems with the phones, and the fact that the Appellant's girlfriend, and mother of his children, Mavis, did not know the phone number for the Sponsor. In paragraph [41] she addressed the issue of the lack of photographic evidence, and in paragraph [42] found that there were discrepancies in the evidence for when these photographs had been taken. In paragraph [43] she addressed further discrepancies in relation to the photographs.

6. Much was made of the issue of the wardrobes at the hearing. It was submitted that this issue occupied "a lot" of the decision. However, I find that this is not the case. I find that the judge does not rely only on the evidence regarding the wardrobes to find that the Appellant is in a marriage of convenience. The judge addresses the issue of the wardrobes, but this is partly because it was the Appellant who produced photographs of the wardrobes at the hearing in an attempt to explain the issue raised in the reasons for refusal letter. The Respondent's representative did not provide a copy of the record of the visit by the immigration officers, but there was no dispute that the visit occurred. I was referred to the case of Miah (interviewer's comments: disclosure:

fairness) [2014] UKUT 00515 (IAC). However, this case refers to the provision of the records of marriage interviews, and no such interview took place in this case. The decision was made following the visit of the immigration officers without the Appellant and Sponsor being called for an interview.

7. On page 1 of the notice of decision the Respondent records the visit of the immigration officers. The only person present was Mavis, who is recorded as having identified herself as the Appellant's girlfriend. The fact of Mavis being the Appellant's girlfriend and mother of his children has not been disputed. The letter refers to a small wardrobe which Mavis, the Appellant's girlfriend, said that the Sponsor used. Given that the Appellant then provided photographs in an attempt to explain this, I do not find there is any error in the judge's consideration of this issue. But it is by no means the only issue that the judge addresses. I find that there is no error of law in her consideration of this issue. I do not find that she has placed undue weight on the reported visit of the immigration officers. It was not disputed that this took place. She has considered the Appellant's explanations and has found these not to be credible.

8. In relation to the evidence of cohabitation, the judge finds at paragraph [35] that the Appellant and Sponsor have not been cohabiting as claimed. She gives reasons in paragraph [35]. In particular she refers to the application form, which was signed and dated by the Appellant on 28 August 2014, in which the Sponsor's address is given as an address in London. It was accepted by Mr. Hodson that the judge was entitled to take this into account. The judge then considered the documentary evidence provided in paragraph [45], but she found "that these are evidence which have been "managed" and does not displace the above findings".

9. Given the judge's findings in paragraph [35], her finding that the Sponsor was not telling the truth about where she had been living, and her other findings in relation to the credibility of the Appellant and Sponsor and the evidence before her, I find that there is no error in the judge finding that the documentary evidence which purported to show that they had been living together was "managed" in order to show this. She was entitled to find that it did not displace her earlier findings. It is possible for bills to be sent to an individual at an address at which he or she does not reside, and given her earlier findings, it was open to the judge not to place weight on this evidence.

10. In relation to the judge's treatment of the social services report, this is set out in paragraphs [48] and [49]. The judge noted that the report stated that both the Sponsor and Mavis are involved in the care of the children, and that the children referred to the Sponsor as "Aunty Mary". However, in paragraph [49] she states:

"Mr Bates submitted that reliance should not be placed on the social services report on the basis that all three parties concerned were well

aware of the difficulty to resolve the immigration matters and that they have the incentive to paint a certain picture to the social services. I concur."

11. I find that there is no error of law in the judge's failure to place more reliance on the social services report. This report was commissioned following the immigration officers' visit. The reason that social services visited was to consider the welfare of the children, not to examine the status of the relationship between the Appellant, his girlfriend and the Sponsor. The fact that social services had no concerns about the welfare of the children does not indicate that their father's marriage to the Sponsor, who is not their mother, is not a marriage of convenience. The fact that the children are found by social services to have a positive relationship with the Sponsor does not indicate that her marriage to their father is genuine. The finding by social services that the children were not at risk has no bearing on the status of the Appellant's and Sponsor's marriage.

12. I find that the judge made adequate findings to support her conclusion that the Appellant and Sponsor's marriage was one of convenience. She set out her reasons and they are clear. It is important to note that it had not been disputed that the Appellant is in a genuine and subsisting relationship with the mother of his children, Mavis, with whom he lives, and who has no immigration status in the United Kingdom. I find that there is no error of law in the consideration of the issue of the marriage of convenience.

13. In relation to grounds one and two, given that I have found that there is no error of law in the judge's consideration of the issue of marriage of convenience, this cannot be material. I find that the notice of decision did not raise the issue of the exercise of Treaty rights and, had the judge found that the marriage was not a marriage of convenience, she should have remitted the decision to the Respondent for consideration of whether or not to issue a residence card as confirmation of his right to reside in the United Kingdom rather than consider the issue of exercise of Treaty rights. However, she found that the Appellant's marriage to the Sponsor was a marriage of convenience. It may have been preferable to have considered this issue first as, in that case, whether or not evidence had been provided to meet the requirements of Regulation 15(1)(b) would have been immaterial. However, given that I have found that there is no error of law in the judge's finding that the marriage was a marriage of convenience, this error in considering the exercise of Treaty rights cannot be material.

Notice of Decision

The decision does not involve the making of a material error of law and I do not set it aside.

The decision of the First-tier Tribunal stands.

Signed Date 14 April 2016

Deputy Upper Tribunal Judge Chamberlain