



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

Appeal Number: IA/23406/2014

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 7<sup>th</sup> September 2015**

**Determination Promulgated  
On 26<sup>th</sup> January 2016**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE O'RYAN**

**Between**

**MUHAMMAD JAWAD  
(ANONYMITY ORDER NOT MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr Khan, Britain Solicitors,

For the Respondent: Ms Fijiwala, Senior Home Office Presenting Officer

**DECISION AND REASONS**

- 1 The Appellant, a national of Pakistan, appeals against the decision of the First tier Tribunal (Judge Symes) dated 23.3.15, in which the Judge dismissed the Appellant's appeal against the Respondent's decision of 23.5.14 refusing to issue the Appellant with a Residence Card under Regulation 17(1) of The Immigration (European Economic Area) Regulations 2006 ('the EEA Regs'). The Appellant had on or around 4.12.13 made an application on form EEA2 for such a card on the basis that he was a family member (spouse) of Ms Agne Kadisaite ('the

Sponsor'), a 'qualified person' under the EEA Regs, being a Lithuanian national working in the United Kingdom. The Appellant and Sponsor had married at the Wood Green Registry Office on 10.10.13.

- 2 On 15.5.14 the Respondent had conducted a marriage interview with the Appellant and Sponsor.
- 3 In a decision letter dated 23.5.14, the Respondent refused to issue a residence card to the Appellant, on the grounds that the Respondent was of the view that the Appellant's marriage was one of convenience, and that the Appellant did not meet the definition of 'spouse' under Reg 2 of the EEA Regs. In her decision letter, the Respondent asserted that there had been 'a number of inconsistent and conflicting answers given' during the marriage interview, as follows (as summarised, accurately, in my view, by the Judge at [5]):
  - (a) the order of events on their first date;
  - (b) whether they had gone to Nandos or not on their second date or simply remained at the park near Woolwich Arsenal;
  - (c) the timing of their first intimacy (the Appellant saying six-seven months after the first date, the Sponsor saying that it was just two to three weeks afterwards);
  - (d) the Sponsor's living arrangements from 2011-2013 when she lived with her friend Lina as to which the Appellant only knew that she lived in Stratford;
  - (e) whether the Sponsor had walked all the way home following his proposal to her;
  - (f) whether they had moved their belongings in together or separately;
  - (g) their lack of recollection of the name of the Appellant's witness at the marriage which he eventually recalled was Mudhasir and she did not recall, and whether or not there was a wedding cake or alcohol at the subsequent celebration;
  - (h) the date of the Sponsor's conversion to Islam (January or April 2014 according to her and him respectively) and their mutual lack of knowledge of dates of Ramadan or the Islamic new year;
  - (i) the timing and duration of the Sponsor's last return to Lithuania;
  - (j) each others landline and mobile telephone numbers; additionally the Appellant had declined to show the interviewer text messages between him and his wife, saying they were private.
- 4 The Appellant has therefore known since being served with the notice of decision dated 23.5.14 what, at least in summary terms, the alleged discrepancies in their interviews were said to be by the Respondent.
- 5 The Appellant filed notice of appeal to the First tier Tribunal. The matter was first listed for hearing on 16.12.14 and the matter came before a

Judge. The hearing was adjourned with the following directions dated 16.12.14, which I have seen in the Tribunal file:

“The Appeal is adjourned and will be heard on the 25<sup>th</sup> February 2015.

Any further witness statement must be filed with the AIT and served upon the other party no later than 11<sup>th</sup> February 2015.

The Home Office interview record dated 15<sup>th</sup> May 2014 to be filed with AIT and served upon the other party no later than the 4<sup>th</sup> February 2015.

All witness statements shall be accompanied by an adornment certifying that they are understood and adopted by the witness as her or her (sic) evidence in chief.”

- 6 Indeed, Judge Symes refers to this direction at [11].
- 7 By the time the matter was listed before Judge Symes on 25.2.15, the Respondent had supplied an ‘interview summary sheet’ on form ICD.4605 dated 15.5.14 (see [10]). The Judge noted at [11] that the Respondent had failed to file and serve a copy of the interview record itself.
- 8 The Respondent was not represented before the Judge, who noted that there was no application for an adjournment [17].
- 9 The Judge heard oral evidence from the Appellant and Sponsor, and there were letters from three witnesses confirming that they had known the couple for varying periods [9]; it would appear that these witnesses also attended court to adopt those letters [24].

### **The FtT decision**

- 10 The Judge correctly directed himself in law in terms of evidential burdens, in accordance with *Papajorgji (EEA spouse - marriage of convenience) Greece* [2012] UKUT 38 (IAC), at [19-20], and held at [21] that the answers to the questions put to the Appellant and Sponsor at interview gave real cause for concern over the genuine nature of the marriage, sufficient to permit the Respondent to raise the matter as one requiring determine in the appeal proceedings.
- 11 The Judge stated at [22] that he was particularly concerned with the following matters:
  - (i) the Appellant’s lack of knowledge about the Sponsor’s living arrangements over a time when they claimed to be dating, as it seemed inconceivable that this would not be a subject of discussion;
  - (ii) the circumstances in which they moved their belongings into shared accommodation;
  - (iii) the lack of the recollection of the name of an important figure at the marriage ceremony, and

- (iv) the Appellant's uncertainty as to the timing and duration of the Sponsor's last return to Lithuania.
- 12 The Judge was less concerned with other matters, for reasons given at [22], but considered that enough of the Respondent's criticisms had hit the target for there to be a real concern as to the relationship being genuine. At [23] the Judge noted his concern that there had been no attempt in the witness statements provided to explain how the discrepancies arose, or to challenge the manner in which the interview was conducted. He accepted that the interview should have been disclosed, applying *Miah (interviewer's comments: disclosure: fairness)* [2014] UKUT 515 (IAC), but noted that the statements were vague and general in the extreme; there was virtually nothing to give content or colour to their own relationship [24]. The judge held at [26] that on the evidence available to him and to the standard of a balance of probabilities, that the Appellant was not the family member of a qualified person because the relationship relied upon was a marriage of convenience, and dismissed the appeal.
- 13 The Appellant's Grounds of Appeal dated 7.4.15 are prolix and large sections contain submissions as to how the appeal ought to have been determined on its merits, rather than seeking to identify errors of law in the decision. However, the Grounds, argue, in summary, that the Judge erred in law in:
- (i) providing an incomplete summary of the procedural history of the appeal: failing to note that the Appellant had (it was asserted) twice, on 3.7.14 and 10.9.14 requested that the Respondent provide the transcript of the marriage interview [17];
  - (ii) accepting the partial interview summary as an accurate reflection of the interview, and thereby misdirecting himself in law as to the minimum procedural safeguards required in such cases, as set out in Miah [17].
- 14 Permission was granted by judge of the First tier Tribunal Robertson on 21.5.15 as follows:
- ". ... whilst the drafter of the grounds has been unduly critical of the Judge (see the accusation levelled against him at para 2 of the grounds), it is arguable that the reason why the marriage interview record should have been provided was because 'what was recorded is disputed'" (grounds, para 17). In the absence of the interview record, the Judge could not determine whether the summary record provided reflected the original record. It is arguable that absence of the marriage interview record resulted in unfairness to the Appellant."
- 15 Before me, I heard submissions from Mr Khan for the Appellant, adopting the Appellant's grounds of appeal. Mr Khan, who had also appeared before the Judge, confirmed that the Respondent had provided the ICD 4605 interview summary sheet at the adjourned hearing of 16.12.14. I have had sight of the interview summary sheet. It is clearly not a complete record

of the interview. However, it raises the same issues, in the same order, as the issues raised in the refusal letter, in terms not materially different from the language used in the refusal letter.

- 16 In the course of submissions, I sought clarification as to whether, at the hearing before the Judge on 25.2.15, Mr Khan had sought a further adjournment of the appeal in order to obtain the full interview record. He had not. He had, he said, asked that in the absence of the interview record, the interview summary sheet should not be relied on, (although he later clarified to me that he had not in fact made an application to the Judge to exclude the interview summary sheet), and that the appeal before the Judge should be determined on the basis of the other evidence before the Judge at the date of hearing, and that in those circumstances the Respondent had not met the evidential burden, which in the first place rested on her, to show that there were reasonable grounds to suspect a marriage of convenience.
- 17 Ms Fijiwala, for the Respondent, argued that the Respondent had discharged the evidential burden on her to establish that reasonable grounds existed to suspect that the Appellant was a party to a marriage of convenience, and that the Judge had been entitled on the evidence before him to arrive at the conclusion that the Appellant was indeed a party to such a marriage.

### **Discussion**

- 18 The Appellant's complaint, at its heart, is one of procedural unfairness. The Appellant should, he argues, have been provided with a copy of the marriage interview. I agree. The Judge also agreed - see para [23] lines 5-7:
- "I accept, of course, that interview records should be disclosed, as shown by decisions such as *Miah* ... and the failure to produce the record does however rather diminish the weight I can give the summary, as it is quite wrong for the record not to be provided to the Appellant and Sponsor."
- 19 However, the Judge immediately continued:
- "Nevertheless as stated by Lord Carnwath in *Secretary of State the Home Department v MN and KY (Scotland)* [2015] UKSC 20 at [22] - in Tribunal proceedings, 'the area of legitimate debate is about relevance and weight, not admissibility'.
- 20 Further, I note in *Miah* itself that the Upper Tribunal referred at [9] to *R v SSHD ex parte Doody* [1994] 1 AC 531, para [14] wherein Lord Mustill observed that procedural fairness in any given context is essentially an intuitive judgement; that what fairness demands is dependent on the context of the decision and this is to be taken into account in all its aspects. The Upper Tribunal also referred to Lord Steyn's observation in *R(Daley) v SSHD* [2001] 2AC 532 at [28] that 'in law context is everything'.

- 21 I find that notwithstanding the fact that the full transcript of the marriage interview had not been successfully filed and served (see paragraph 27 below), the interview summary sheet was so provided, and that it amounted to evidence on which the Respondent was entitled to rely in support of her proposition that there were reasonable grounds to suspect a marriage of convenience. As evidence, I accept, and I believe the Judge also accepted, that it is less reliable than a full copy of the marriage interview. However, it is evidence nonetheless, and the Judge did not err in law in taking it into account.
- 22 The context (see Doody, above) in which the Judge was assessing the fairness of the Respondent relying on the interview summary record, was that since service of the Respondent's decision letter of 23.4.14, the Appellant had been aware of the basis on which the Respondent was alleging that there were reasonable grounds to suspect a marriage of convenience. The Appellant had also, on 16.12.14, received a copy of the interview summary sheet raising the same points.
- 23 However, the Appellant chose not to address any of the alleged discrepancies in the witness statement evidence of the Appellant or the Sponsor. The Judge remarked that the statements were vague and general in the extreme, and there was no attempt in those statements to explain how the discrepancies arose or to challenge the manner in which the interview was conducted. The Judge also observed that the evidence of the Appellant's supporting witnesses was so scant as to be almost non-existent [24].
- 24 In that context, I find that it does not behove the Appellant to continue to complain that he was not provided with a full copy of the marriage interview. The Appellant has, by the manner in which he chose to prepare his evidence, forgone his opportunity to address, in witness statement and oral evidence, the matters concerning the Respondent. Further, he did not apply for a further adjournment of the appeal at the hearing of 25.2.15.
- 25 I find, notwithstanding the failure of the Respondent to serve the marriage interview, that there was no unfairness in the manner in which the Judge proceeded. Further, there is nothing in the Appellant's complaint (see [13(i)] above) that the Judge did not set out in his decision that the Appellant had, he asserts, twice written to the Respondent asking for a copy of the marriage interview; it is clear from [11] that the Judge was aware that the Respondent had been directed on 16.12.14 to file and serve the document. Whether the Appellant had written to the Respondent prior to that date requesting the document adds nothing material to the picture, and does not demonstrate that the Judge failed to appreciate some relevant fact which was material to the issue of procedural fairness.
- 26 Procedural fairness is the only identifiable ground raised in the Appellant's grounds which are otherwise verbiage. For the avoidance of doubt, I find that the reasons given by the Judge, summarised at my [11] above, were sufficient in law to support his finding that on a balance of probabilities,

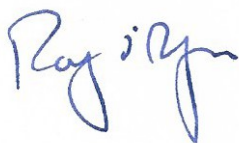
the Appellant was not the family member of a qualified person, because the relationship relied upon was a marriage of convenience.

- 27 I should add that in the course of the hearing before me, Ms Fijiwala discovered in her papers a copy of the marriage interview, together with evidence that the Respondent had in fact at least attempted to file and serve it, by sending a copy to 'Richmond Magistrates Court, Parkshot, Surrey TW9 2RF' on 29.1.15. Given that this a satellite court, I query whether this was an appropriate address for the service of documentation. It had clearly not reached the Tribunal file by the time the Judge heard the appeal at that hearing centre on 25.2.15. There was another letter in the Respondent's file indicating that a copy of the interview had also been sent to 'M S Arif, Darwin's College, 1<sup>st</sup> Floor, Odd Fellows House, 40 Fountain Street, Manchester M2 2BE'. Mr Khan informed me that the Appellant had never studied at that college, and did not know anyone by the name of M S Arif.
- 28 The Judge proceeded on the basis that the Respondent had failed to file and serve the marriage interview. I have not considered the interview, save to note that it was very lengthy. However, the discovery that the Respondent had at least attempted to file and serve the document does not alter my analysis above. I do not find that it is material that the failure of the Respondent to file and serve the interview arose from the Respondent posting the document to the wrong person, rather than taking no action. The Appellant still took his decision about how to prepare for the appeal, and failed to address adequately or at all the evidence which was being relied upon by the Respondent, and had been served on the Appellant, ie the interview summary sheet.
- 29 This decision should not be taken as in any way diluting the importance of providing appellants with all the material taken into account by the Respondent in making an adverse decision, or the guidance provided in Miah. I have held that in the context of this particular appeal, and in light of the way that the Appellant chose to prepare and present his case before the First tier, there was no procedural unfairness to him.

### **Decision**

- 30 I ruled at the hearing before me that the Judge's decision did not involve the making of any material error of law. I now provide these written reason for that decision. I uphold the decision of the First tier.

Signed:



Deputy Upper Tribunal Judge O'Ryan

Date: 25 January 2016