



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

Appeal Number: IA/32540/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 15 January 2016**

**Decision and Reasons
Promulgated
On 19 January 2016**

DEPUTY UPPER TRIBUNAL JUDGE KAMARA

Between

MRS BIJAL KIRITKUMAR PATEL
(ANONYMITY DIRECTION NOT MADE)

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr F Khan, counsel (Direct Access)

For the Respondent: Mr T Melvin, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. This is an appeal against the decision, promulgated on 16 June 2015, of First-tier Tribunal Judge LM Shand QC (hereinafter referred to as the FTTJ).

Background

2. The appellant married Mr Felipe Pereira, a Portuguese national, on 14 October 2013. She sought a Residence Card as confirmation of her right of residence as the spouse of an EEA national. In refusing her application on 30 April 2015, the Secretary of State concluded that

the appellant was a party to a marriage of convenience owing to the information gleaned from a home visit, which took place on 17 July 2014. The respondent also considered whether the appellant was in a durable relationship with Mr Pereira but concluded otherwise owing to insufficient documentation as well as the outcome of the aforementioned home visit.

3. In the somewhat formulaic grounds of appeal; the appeal being lodged on 14 August 2014; the appellant asserted that she intended to particularise the grounds further at the hearing of the appeal. She sought a paper consideration of her appeal. She subsequently changed this to an oral hearing by letter dated 6 October 2014.
4. In accordance with the appellant's request, the appeal was listed for an oral hearing. The appellant did not attend and the FTTJ dismissed her appeal on the evidence before her. The FTTJ concluded that the appellant had entered into a marriage of convenience and that she was not in a durable relationship with the EEA sponsor and dismissed her appeal.

Error of law

5. The grounds of application argue that the decision of the FTTJ made no reference to the appellant's witness statement, which was submitted on her behalf; that the appellant did not receive the notice of hearing and had she done so she and her husband would have attended the hearing. It was further argued that the FTTJ had erred in respect of the burden of proof; that she had not considered that the respondent had failed to conduct an interview or consider the appellant's case under Article 8 either within or outside the Rules.
6. FTTJ Colyer granted permission solely on the basis that the FTTJ arguably erred in failing to make reference to the appellant's evidence as it was not in the tribunal file; that it was arguable that the appellant should have been given an opportunity to give oral evidence and make submissions. Permission was expressly refused on the grounds regarding Article 8, this being an EEA case. The remaining grounds were described as "*weaker, less meritorious and less persuasive*" but were not excluded.
7. The Secretary of State lodged a Rule 24 response on 27 November 2015. In opposing the appeal, the respondent said that the FTTJ directed herself appropriately and had correctly observed the appellant's lack of attendance; that proper service of the notice of hearing had occurred and a lack of contact from the appellant to explain her non-attendance. There was no evidence that a copy of the appellant's statement had been served on the respondent and it was not before the tribunal.
8. At the hearing before me, Mr Melvin served a skeleton argument on

the Tribunal and Mr Khan, which expanded somewhat on the Rule 24 response.

9. For my part, I advised the representatives that the IAC case file showed that the appellant had corresponded with the Tribunal on two occasions, once in order to request an oral hearing and secondly to request that the matter be transferred to a London hearing centre.
10. At the outset, Mr Khan informed me that the appellant was not in attendance before the Upper Tribunal. No explanation was provided. There was also no indication that the EEA sponsor had attended either. He told me that the appellant forwarded a bundle of material to the IAC and respondent on 23 December 2015. His submission was simple in that the appellant had not received the notice of hearing and had not been given an opportunity to provide her evidence. Furthermore, he argued that there was no proper basis for saying the appellant was not in a genuine relationship with the sponsor and in addition, the respondent had erred by failing to interview the appellant and sponsor.
11. Mr Melvin argued that there was no material error of law. The Notice of Hearing had been sent to the appellant. The onus was not on the tribunal to telephone appellants to confirm why they have not attended the hearing. The FTTJ dealt with all of the evidence presented on behalf of the appellant. With regard to the issue of the interview, this was a matter of course in marriage cases. He continued that the decision in question was made in 2014 and the appellant had a good length of time to put forward her evidence. There was no witness statement from the claimed partner and it likely that appellant is still married to someone else. This point was raised by respondent and not addressed by appellant in the form of divorce papers, the grounds of appeal or any other evidence to counter the Immigration Officer's file note. There was still no witness statement from the sponsor or corroborative evidence from any friends to support the claimed relationship. It was also open to the appellant to make a fresh application, which addressed the issues in dispute. With regard to the appellant's apparent interests in pursuing her appeal, Mr Melvin argued that her sole interest was in putting off the hearing date. Her evidence could have been sent in for the earlier hearing in January 2015 rather than held back.
12. In reply, Mr Khan stressed that a fresh application would not rectify matters or result in a quicker resolution of the matter.
13. At the end of the hearing, I announced that the FTTJ made no material error of law and that I upheld her decision. The reasons are as follows.
14. The first ground of appeal asserted that the FTTJ failed to make reference to a witness statement, which was said to be before her. There is no indication from the case file to show that the Tribunal

received that document. The said statement has now been submitted, however it is a brief document containing a series of unsupported assertions. Accordingly, while the Tribunal might have inadvertently erred in considering the appeal without this statement, such error is not material to the outcome of the appeal.

15. It was said that the appellant was not in receipt of the notice of hearing. It is clear from the case file that the notice of hearing was posted to the appellant, at the address provided by her. I do not accept that the appellant's claim not to have received it can be relied upon. The appellant does not deny receiving each and every other piece of correspondence from the Tribunal of which there were several. I am also inclined to accept Mr Melvin's submission that the appellant's main aim was to delay consideration of her appeal.
16. Firstly, the appellant appealed in August 2014 but waited until 6 October 2014 to request an oral hearing. Despite being notified of a hearing date in Birmingham by notice dated 11 November 2014, she responded only on 29 December 2014 a matter of days prior to it being due to be heard in Birmingham on 8 January 2015. This resulted in a further delay. The appellant chose not to attend the hearing today and no explanation was provided. Nor did the EEA sponsor attend. I also note that in the evidence sent by the appellant on 23 December 2015, there is no witness statement or even letter in support from the sponsor. I consider it more likely than not that the appellant received the notice of hearing and chose not to attend the hearing.
17. Mr Khan did not seek to develop the third ground, which refers to the burden on the respondent in relation to marriage of convenience allegations. The FTTJ made no error in her treatment of this issue.
18. Finally, Mr Khan argued that the appellant and sponsor ought to have been interviewed. The grounds cite Miah (interviewer's comments: disclosure:fairness) [2014] UKUT 00515 (IAC), however this case is not authority for that proposition. In view of the appellant's description of herself as a married housewife when she sought entry clearance in 2011; that she described herself as single when marrying the EEA national in 2013 and that the contents of the appellant's room when visited by Immigration Officers in 2014 showed that she was cohabiting with someone by the name of Shirish, whereas the sponsor's name is Felipe, I can see no basis of the argument that the respondent was obliged to conduct a marriage interview when faced with clear evidence of a marriage of convenience.
19. There is no material error of law in the FTTJ's decision.
20. There is no justification for making an anonymity direction in this matter.

Conclusions

- (1) The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.
- (2) I uphold the decision of the FTTJ.

Signed:

Date: 17 January 2016

Deputy Upper Tribunal Judge Kamara