



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

Appeal Number: EA/04104/2016

THE IMMIGRATION ACTS

Heard at Bradford

On 2 November 2017

**Decision & Reasons
Promulgated**

On 27 November 2017

Before

UPPER TRIBUNAL JUDGE LANE

Between

**ZEESHAN ANWAR
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Ahmed, instructed by Mayfair Solicitors

For the Respondent: Mrs Pettersen, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant, Zeeshan Anwar, was born on 30 September 1988 and is a male citizen of Pakistan. He appealed to the First-tier Tribunal (Judge Pickup) against a decision of the Secretary of State dated 16 March 2016 to refuse to grant him a residence card as confirmation of a right to reside in the United Kingdom pursuant to the Immigration (EEA) Regulations 2016 (as amended). The First-tier Tribunal dismissed the appeal. The appellant now appeals, with permission, to the Upper Tribunal.

2. The parties agree that those grounds of appeal which concern Article 8 ECHR will not be argued. The appeal was made in-country and there was no decision by the Secretary of State to remove this appellant. Article 8 ECHR and Section 55 of the Borders, Citizenship and Immigration Act 2009 do not arise.
3. Secondly, I do not accept that the judge has erred in respect of the burden of proof in this instance. The appeal turned on whether or not the appellant was a party to a marriage of convenience. Having read the decision carefully, I cannot see that the judge has done anything other than determine this appeal on the clear finding that the respondent has discharged the burden of proof upon her. The grounds complain that the judge failed to attach proper weight to the evidence of a close relationship between the appellant and the sponsor and her two daughters. Indeed, at the Upper Tribunal hearing, Mr Ahmed referring me to [30] of Judge Pickup's decision, submitted that those facts found by the judge in that paragraph should have led to the judge concluding on a balance of probabilities that the marriage was not one of convenience. At [30], the judge wrote:

I have taken into account the numerous documents in the appellant's bundle none of which are challenged. I am satisfied they currently live together at the same address. However this is not conclusive of their relationship being genuine as opposed to a marriage of convenience. It is known the persons are prepared to cohabit for ulterior purposes. I also bear in mind they live with her children and that he may play a role in the household caring for the children. However, I am satisfied the appellant's primary motivation has been to remain in the UK and that he has previously attempted to do this with a different EEA member state sponsor. It appears that when that failed to produce the desired residence certificate he quickly moved on to finding another person to sponsor a new application.

4. I acknowledge that the appellant's circumstances as found by the judge are somewhat unusual. However, I do not agree with Mr Ahmed the facts as found by the judge should inevitably have led him to conclude that the marriage was genuine. Mr Ahmed submits that to find otherwise would be perverse. The judge has gone to great lengths [26] to consider the excuses given by the appellant for not attending an interview with the respondent's officers. The judge found that the appellant had failed to attend two interviews without giving any adequate reason that he had also failed to complete a marriage questionnaire disclosing that his former wife had been found to have been already married to another person at the time when the appellant was seeking an EEA residence card. Not surprisingly [28] the judge concluded that "All of this was and remains highly relevant to the credibility of the appellant's current claim for an EEA residence card on the basis of his current marriage." The judge was entitled to take into account that evidence and, indeed, all the evidence before him before deciding whether or not the marriage was genuine. Notwithstanding the fact that the appellant and sponsor live together, it remained open to the judge, provided that he gave adequate reasons for so finding, to conclude that the marriage was not genuine. That is exactly

what he has done in this case. This is not a case of the judge having a mere suspicion that the marriage was not genuine; as I have noted, he has given very detailed reasons for so finding. In the light of that reasoning, his decision cannot be described as perverse. Another Tribunal may have reached a different decision on the same evidence; however, that is not the point. I can identify no reason arising from the grounds or from Mr Ahmed's submissions on those grounds which would lead me to interfere with the judge's decision.

Notice of Decision

This appeal is dismissed.

No anonymity direction is made.

Signed

Date 22 November 2017

Upper Tribunal Judge Lane

**TO THE RESPONDENT
FEE AWARD**

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

Signed

Date 22 November 2017

Upper Tribunal Judge Lane