



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: EA/01491/2018

**THE IMMIGRATION ACTS**

Heard at Field House  
On 11<sup>th</sup> September 2018

Decision & Reasons Promulgated  
On 13 September 2018

Before

UPPER TRIBUNAL JUDGE LINDSLEY

Between

YASIR [M]  
(ANONYMITY ORDER NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Mr N Garrod, Counsel, instructed by Max Law Solicitors

For the Respondent: Mr S Kotas, Senior Home Office Presenting Officer

**DECISION AND REASONS**

*Introduction*

1. The appellant is a citizen of Pakistan who is married to Mrs [R], a citizen of Romania. He applied for a residence card following their marriage in 2015. This was refused, and his appeal dismissed by Judge of the First-tier Tribunal Watson in a decision promulgated on 6<sup>th</sup> March 2017. He made a new application for an EEA residence card on the basis of his marriage on 10<sup>th</sup> November 2017. This

application was refused on 18<sup>th</sup> January 2018. His appeal against this decision was dismissed by First-tier Tribunal Judge C Burns in a determination promulgated on the 3<sup>rd</sup> April 2018.

2. Permission to appeal was granted by Judge of the First-tier Tribunal EM Simpson in a decision dated 16<sup>th</sup> July 2018 on the basis that it was arguable that the First-tier judge had erred in law in failing to assess or give reasons for rejecting the fresh evidence that the appellant sought to rely upon to show that his marriage was not one of convenience, namely the communications between the appellant and his wife prior to marriage and the witness evidence, particularly given that the latter was not rejected as lacking credibility.
3. The matter came before me to determine whether the First-tier Tribunal had erred in law.

#### *Submissions – Error of Law*

4. The appellant argues that the decision of Judge Burns errs in law for the following reasons. The Judge finds at paragraph 44 of the decision that the appellant and his wife have family life, and yet nevertheless dismisses the appeal. The decision of the First-tier Tribunal is justified by the fact that in the previous appeal the First-tier Tribunal found the marriage to be one of convenience, and further that there was no evidence of communication between the appellant and his wife before marriage, see paragraph 15, however in the appellant's bundle between pages 24 and 76 there was print outs of such evidence, and there was also original Whatsapp evidence in the appellant's telephone which was brought to the hearing. Further the First-tier Tribunal found the two additional witnesses credible, see paragraphs 36 and 37. These witnesses state that the relationship between the appellant and sponsor is genuine, and so it was not rationally possible to find that the marriage to be one of convenience. The decision of the First-tier Tribunal therefore lacks any adequate reasons to justify its conclusions. This is particularly the case given that the appellant and his wife also gave mostly consistent answers at their marriage interview.
5. Mr Kotas agreed that the First-tier Tribunal erred in law. Both parties were happy to proceed to remake the appeal immediately. Neither representative wished to ask any questions of the appellant, his wife Mrs [R], or the witness Ms [B] so they simply adopted their statements as their evidence confirming that they were true and correct, and we then proceeded to submissions. I asked Mrs [R] about her current work, and she confirmed that she continued to work full time as a registered nurse for the [~] Care Home, where she had been since August 2015 although the home was now owned by HCI and not Bupa. Mr Kotas indicated he accepted that she was a qualified person. At the end of the hearing I informed the parties that I intended to allow the appeal, but that I would put my reasons in writing.

### *Conclusions – Error of Law*

6. The First-tier Tribunal correctly sets out relevant case law on the issue of marriages of convenience in EEA residence card appeals, and the guidelines in Devaseelan at paragraphs 9 to 15 of the decision. It is also clear that the First-tier Tribunal was aware that new evidence was being produced which addressed the lack of evidence of a relationship prior to the marriage, in the form of phone and media records, and that there were now witnesses to the genuineness of the marriage, and that it was contended by the appellant that this was evidence which was not before the previous First-tier Tribunal and should lead to a different conclusion, see paragraph 21 of the decision.
7. The TANGO and WHATSAPP evidence is rejected because the previous First-tier Tribunal had found that the appellant had put together a well-planned fraud, and Judge Burns stated that she was not a “expert in telecommunication”, see paragraphs 24 and 34 to 35. The witness evidence was found to be credible. It is clearly found that both witnesses support there being a current genuine and subsisting relationship. It is found by the First-tier Tribunal that the appellant and his wife have a family life at paragraph 44, although at paragraph 42 it is confusingly stated that the Judge was unable to decide that they were currently a couple.
8. I find that the First-tier Tribunal erred in law by failing to properly consider the highly relevant documentary social media evidence going to whether there was a genuine relationship which preceded the marriage and by failing to place the credible witness evidence that the relationship was genuine in the balance, and thereby failing to consider whether this new evidence led to a different conclusion than the one reached by the previous First-tier Tribunal with respect to whether the marriage was one of convenience, this being the decisive issue in the appeal. In addition, some of the findings, such as the ones at paragraphs 42 and 44 of the decision, are contradictory and so there was also a failure to give proper reasons for the decision reached.

### *Submissions - Remaking*

9. Mr Kotas stated that the correct test as to whether a marriage was one of convenience was that set out in the Supreme Court judgement in Sadowska v SSHD [2017] UKSC 54 which found that a marriage of convenience was one where the predominant purpose of the marriage is enjoying the right of free movement. He relied upon the reasons for refusal letter, and the decision of Judge of the First-tier Tribunal Watson promulgated on 6<sup>th</sup> March 2017 and submitted that the appeal should be dismissed. The reasons for refusal letters says, in short summary, that the marriage between the appellant and Ms [R] is a sham because of the interview discrepancies; because of the findings of Judge Watson which in turn were reliant on the fact that no friends or family attended the hearing to support their letters asserting the marriage was genuine; and because although there was evidence

placing the appellant and Ms [R] at the same address this had just been creating to support the deception that they were genuinely married. It is contended that there was no material difference between the new application and the evidence before Judge Watson, and stated that the Home Office could not accept the printouts of the WHATSAPP documents as they could not verify the messages or photographs.

10. Mr Garrod submitted that weight should be placed on the evidence that showed the appellant and Ms [R] had a relationship prior to their marriage, and that this showed that it was a genuine marriage from the start. He referred to the TANGO and WHATSAPP messages and photographs and submitted that there were long, detailed conversations over a considerable period of time which indicated a romantic relationship prior to the marriage. This evidence was supported by other documentary evidence such as a tenancy agreement, bills, ordinary photographs of the couple together and the witness statements from various friends, two of which had attended before the First-tier Tribunal and one of which, Ms [B], was present today, Mr [Z] being unable to attend today. He submitted that the discrepancies in the interview were not major ones and not many in number, and that there was evidence placing the appellant at all of the addresses. He also indicated that there was equivalent evidence going forward after the marriage as well.

#### *Conclusions – Remaking*

11. The issue in this appeal is whether the marriage between the appellant and Ms [R] is one of convenience. The burden of proof lies upon the respondent and the standard of proof is the balance of probabilities. The question is whether the predominant purpose of the marriage is to obtain free movement rights for the appellant, and the focus is what were the intentions of the parties at the time of the marriage.
12. In accordance with the decision in Devasselau my starting point is the decision of Judge of the First-tier Tribunal Watson promulgated on 6<sup>th</sup> March 2017. He decided that the marriage was one of convenience and that documentary evidence had been manipulated by the appellant and his wife to make it appear genuine. He did not accept that the evidence of cohabitation was therefore to be given any weight. He noted that no witness other than the appellant and Ms [R] attended the Tribunal; that there was no documentary evidence supporting a relationship prior to the marriage; there was no evidence placing the appellant at [~] Brentwood Road or [~] Mansfield Road where he said he had lived with Ms [R] prior to the marriage; and no financial records prior to the marriage either.
13. The appellant and Ms [R] married in English law on 25<sup>th</sup> August 2015, having had an Islamic marriage on 24<sup>th</sup> May 2015. The appellant and Ms [R] say that they met in April or May 2014, and that they have social media records showing that they were in a romantic relationship from that time. I find that the TANGO chat records show a developing romantic relationship between the appellant and Ms [R] interspersed with telephone conversations from May to September 2014. Similar WHATSAPP messages exist from March 2015 to March 2018. It is notable that in

addition to communicating love they also refer to family members, and problems such as someone scratching their car and issues such as one party forgetting to make the bed. I find the content of the messages strongly supports a genuine developing relationship between the appellant and Ms [R] and is not suggestive of it being artificially constructed. I accept that such evidence might be fabricated but I do not find that this is the case in this instance as the social media print outs do not stand alone as evidence of the relationship. There are other photographs of the relationship in the stage prior to marriage showing the appellant and Ms [R] at home, in restaurants and in parks, celebrating Ms [R]'s birthday. These are clearly taken on different days with the parties in different clothing. The wedding photos show a family celebration with around 13 people, some of whom are children. There are photos of the religious wedding as well as the civil one, which would clearly have been unnecessary if the marriage were just for an immigration advantage. There are documents which place the appellant and Ms [R] at [~] Mansfield Road in 2015 from Barclays bank, HSBC and Sky and Ms [R]'s employer Bupa which is the address which they both give when they have their civil marriage ceremony as their address in August 2015. Further there is the written and oral witness evidence of Ms [B] and Mr [Z] who both gave evidence before the First-tier Tribunal that they knew the couple prior to their marriage: Ms [B] being a good friend and sometime work colleague of Ms [R] from 2012 and Mr [Z] having known the appellant since childhood. They both had visited the couple at their home, and Mr [Z] had attended the wedding. Both were found to be credible witnesses, and gave evidence that the appellant and Ms [R] have been in a genuine loving relationship.

14. I find that the appellant and Ms [R] have therefore substantially produced the evidence that Judge Watson found to be missing, and which in large part led him to conclude that the respondent had shown the relationship was one of convenience. This leaves the issue of the discrepancies at interview: I do not find the variations in evidence between the appellant and Ms [R] with respect to the possibility of IVF; Ms [R]'s possible future employment; and the different reasons given as to why the appellant was not at Ms [R]'s daughter's graduation ceremony suffice to outweigh the evidence that this is and was a genuine loving relationship which resulted in marriage. The evidence from social media for the period after the marriage, the photographs combined with the evidence of joint tenancy agreements and utility bills plus the witness evidence also strongly supports the contention that the relationship has continued to be a genuine and loving one since its instigation.
15. When viewed as a whole I find that the evidence before me, both from the witnesses and in the documents, leads me to a different conclusion than Judge Watson. I find that the respondent has not shown on the balance of probabilities that this marriage is one of convenience, as I find it was not entered into predominantly for the purpose of obtaining free movement rights for the appellant. It is accepted by Mr Kotas for the respondent that Ms [R] is a qualified person as she is a worker in the UK, and I find that this is the case on the basis of her evidence and documents in the appellant's bundle. I find that that appellant is a family member of Ms [R] as he is her spouse and not in a marriage of convenience, in accordance with Regulation

7(1)(a) of the Immigration (European Economic Area) Regulations 2016, and therefore that he is entitled to residence card in accordance with Regulation 18 of the same regulations.

Decision:

1. The making of the decision of the First-tier Tribunal involved the making of an error on a point of law.
2. I set aside the decision in its entirety.
3. I re-make the decision in the appeal by allowing the appeal under the Immigration (European Economic Area) Regulations 2016.

Signed: *Fiona Lindsley*  
Upper Tribunal Judge Lindsley

Date: 11<sup>th</sup> September 2018

Fee Award                      Note: this is **not** part of the determination.

In the light of my decision to re-make the decision in the appeal by allowing it, I have considered whether to make a fee award. I have had regard to the Joint Presidential Guidance Note: Fee Awards in Immigration Appeals. I have decided to make no fee award because I was not asked to make one and because the oral witness evidence was central the success of the appeal.

Signed: *Fiona Lindsley*  
Upper Tribunal Judge Lindsley

Date: 11<sup>th</sup> September 2018