Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: EA/02762/2017**

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 8 March 2018	**On 4 April 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE MCGEACHY

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

DAWOOD SHUEB MAPARA
(ANONYMITY DIRECTION NOT MADE)

Respondent

Representation:

For the Appellant: Mr T Wilding, Senior Home Office Presenting Officer
For the Respondent: Mr R J-P Seeboruth, of Counsel

DECISION AND REASONS

1. The Secretary of State appeals, with permission, against a decision of Judge of the First-tier Tribunal Row, who in a determination promulgated on 9 May 2017, allowed the appeal of Mr Dawood Shueb Mapara against a decision to refuse him a permanent residence card as a person who had a retained a right of residence as the former spouse of a French national exercising EEA Treaty rights in Britain.

2. Although the Secretary of State is the appellant before me I will for ease of reference refer to her as the respondent as she was the respondent in the

First-tier Tribunal. Similarly, I will refer to Mr Dawood Shueb Mapara as the appellant as he was the appellant in the First-tier.

3. The appellant is a citizen of India, born on 13 January 1985. He entered Britain in 2007 and married the sponsor, a French national in July 2009. In October that year he was granted a residence card valid to 20 October 2014. The appellant and the sponsor were divorced in September 2014. In October that year the appellant made an application for a permanent residence card. In January 2015 the sponsor was named as the sponsor on a residence card application of a Tauseef Akram. In February 2015 a letter was sent to the appellant inviting him and the sponsor to a marriage interview in March 2015, a response being requested by 23 February 2015. No response was received. On 8 March 2015 a letter was again sent to the appellant inviting him to a marriage interview on 8 April 2015, confirmation of attendance being requested by 25 March 2015. He did not attend. On 26 March 2015 the appellant was invited to attend a marriage interview on 28 April 2015, confirmation of attending being requested by 14 April 2015. No response having been received, a letter was sent to the appellant informing him that, following his failure to confirm attendance at three consecutive interviews the case would be passed to a caseworker for a decision. On 24 April 2015 the appellant was issued with the refusal letter because he had failed to attend two interviews without good reason and that under Regulation 2 - that is the provisions relating to a marriage of convenience - and with reference to Regulation 20B (4) and (5), failure to attend interviews as well as the sponsor's involvement in another application was sufficient to merit refusal.

4. In May 2015 the appellant made an out of time application to appeal which was struck out as being out of time in August 2015. In July 2015 the sponsor was named as the sponsor on a residence card application of a Chaitanya Pradip Chani. In August 2015 a second application for a permanent right of residence was made and a judicial review application was lodged in November that year against a decision to refuse a permanent right of residence, that being the refusal made on 24 April prior to the date of the third interview.

5. An Acknowledgment of Service was lodged in December 2015 and the judicial review application was refused in August 2016. In the meantime, however, there had been a further refusal of a second application made by the appellant on the same grounds as the previous reasons for refusal.

6. The third application made by the appellant in September 2016 led to the refusal dated 3 March 2017 on the same grounds as the previous two refusals. In May 2017 Judge Row allowed the appeal against that refusal.

7. Judge Row, who considered the appeal on the papers and therefore did not have the benefit of representation on behalf of the Secretary of State, considered the issue of the failure to attend two interviews. He stated that the appellant asserted that he could not attend the first interview and had notified the respondent and said that he could attend the second interview and had arranged to do so but on 24 April had been told by the appellant –

it is clear the judge means the respondent – that his application had been refused for failure to attend the interview which was due to take place four days later. In paragraph 9 the judge wrote:

> "This seems almost unbelievable but appears to be correct. The appellant has produced a letter from the respondent dated 9 February 2015 and a copy of his reply to that letter saying that he could not attend the first interview. The appellant produced a letter from the respondent dated 26 March 2015 confirming the second interview on 28 April 2015 and a copy of his response which indicated that he would attend. The appellant produced a copy of the letter from the respondent dated 24 April 2015 and a decision attached to it saying that his application had been refused because he had not attended the interviews on 9 March and 28 April 2015."

8. The judge went on to say that he found the appellant had not failed to attend two interviews without good reason as he was unable to attend the first and was willing and able to attend the second. There was evidence, moreover, that the sponsor was qualified as an EEA national exercising Treaty rights as the judge had seen original copies of the sponsor's P60s for the years ending 5 April 2009 to 2016 and there was a P45 for the sponsor dated 20 September 2013 as well as original wage slips for the sponsor between 2009 and August 2012. The judge also referred to further wage slips of the sponsor. He then found that the appellant had been employed and said that there were three reasons for the refusal and that each of the reasons was wrong. He therefore allowed the appeal.

9. The grounds of appeal lodged by the Secretary of State set out the chronology to which I have referred above. They pointed out that the reasons for refusal related to two requests to attend interview where the appellant had not attended and that on the third request the appellant had been told that he must respond by 14 April. The appellant had not done so and that was the principal reason for refusing the application. A further reason was that the sponsor appeared to have sponsored multiple applications. It was pointed out that the judge had not engaged with the reasons for refusal of the application. He had erred in stating that there were only two invitations to interview when in fact there had been three and by not realising that the letter of refusal had been written after there had been no response from the appellant and he had not attended the first two interviews. Furthermore, the judge had not engaged with the fact that the sponsor had sponsored a number of applications. Moreover, the judge had not had not been informed by the appellant that a judicial review application had been made which had been refused on the papers. The judge had therefore erred in his consideration of the facts.

10. Mr Wilding relied on the grounds of appeal and asked me to find that the judge had based his decision on various mistaken findings of fact and that the judge had erred by not finding that the Secretary of State had discharged the burden of proof upon her as there had been good and cogent reasons for concluding that this was a marriage of convenience.

11. In reply Mr Seeboruth referred to a number of documents which he said assisted the appellant. These had been produced shortly before the date of hearing before me.
Firstly, there was a form completed by the appellant stating that he would not be able to attend the interview on 9 March but secondly there was a form completed by the appellant, although not signed and not indicating whether or not an interpreter was required, stating that he would be able to attend for interview. Mr Seeboruth stated that this had been sent to the Secretary of State and referred to the fact that there was a photocopy of a recorded delivery number on the response. The recorded delivery number is EZ772083383GB. It gives no indication as to when that letter was posted nor indeed that it was a letter that was posted to the respondent. Mr Seeboruth also argued that the Secretary of State had been wrong to refer to the judicial review application being refused. He said that that was not the case and that the judicial review application had been resolved by consent. He therefore argued that the appellant met the requirements of the Rules and there was no material error of law in the determination of the judge.

Discussion

12. I consider that there are clearly material errors of law in the determination of the judge. He did not engage with the reasons given by the Secretary of State for the refusal of the application. In particular, he ignored the fact that there had been three invitations to interview and that the appellant had not attended on the first two and with regard to the third invitation, he had been told to respond by 14 April and had not done so. The judge had erred in fact in thinking that there had only been two invitations to interview and that the invitation to attend on the 28th April was for the second interview. I consider there to be no weight placed on the form submitted by Mr Seeboruth at the hearing before me, to which I have referred above, as there is no indication as to when that was sent or indeed to whom it was sent. Moreover, the judge did not engage with the fact that the sponsor had attempted to sponsor two further partners. I find that these are material errors of law in the determination of the judge in that he had not engaged with the chronology in this case which I have set out above and to which reference is made in the letter of refusal and not engaged with the clear allegations of the Secretary of State that this was a marriage of convenience. I therefore set aside the decision of the First-tier Judge.

13. Moreover, with regard to the assertion of Mr Seeboruth that the judicial review proceedings had been settled by consent, a perusal of the consent order shows that the applicant in the order produced was Mr Chaitanya Pradip Jani who was the sponsor's third claimed partner. The documents relating to those judicial review proceedings which include a marriage certificate of the sponsor and Mr Jani as well as other correspondence relating to him had possibly been put in error, or more worryingly, submitted in an attempt to mislead the court.

14. Having set aside the determination of the Judge in the First-tier it is appropriate that I go on to reconsider the appeal. I am clearly able to do so taking into account the evidence before me. The clear evidence is that not only did the sponsor not attend two requests for interview but he did not respond by the due date to the third request and, further, that the Secretary of State had clear evidence that the sponsor was complicit in multiple applications for residence cards. I consider that on that evidence the Secretary of State had discharged the burden of proof upon her to show that this was a marriage of convenience. The reality is that the appellant who did not attend before the First-tier Judge – he considered the appeal on the papers– did not attend before me and has put forward no evidence that this was a genuine marriage. Although there is financial evidence that the sponsor was working as indeed was the appellant, there is no evidence whatsoever to show that they were living in the same house nor indeed that the appellant and the sponsor were ever living together. I am also concerned by the possible attempt to mislead the court by putting in a consent order which did not relate to the appellant.

15. For these reasons I find that the decision of the Secretary of State to refuse to grant a permanent right of residence to the appellant was correct and having set aside the decision of the judge in the First-tier Tribunal I dismiss the appeal.

Notice of Decision

The appeal is dismissed.

No anonymity direction is made.

Signed  Date: 28 March 2018

Deputy Upper Tribunal Judge McGeachy