



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

Appeal Number: IA/26464/2015

THE IMMIGRATION ACTS

**Heard at Field House
On 14 November 2017**

**Decision & Reasons Promulgated
On 6 March 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE PEART

Between

**MR SYED SHAH HYSSAIN BUKHARI
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Janjua of Morden Solicitors

For the Respondent: Mr Tufan, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Pakistan. He was born on 1 July 1989. He appealed against the respondent's decision to refuse to grant him a residence card on the basis of his relationship with an EEA national such decision being made on 23 June 2015.
2. In a decision promulgated on 13 January 2017, Judge M A Khan dismissed the appellant's appeal. The judge found the appellant was not in a genuine and subsisting relationship with his EEA national sponsor and that the respondent on the balance of probabilities had established that the

appellant had entered into a marriage of convenience under Regulation 21B(1)(c) and (2) of the EEA Regulations 2006 (as amended).

3. The grounds claim that the judge erred because it was unfair to refuse the adjournment request. There was medical evidence to show the sponsor was unfit to attend court. In any event, the judge failed to satisfy himself in terms of **Papajorgii (EEA spouse - marriage of convenience) Greece [2012] UKUT 00038 (IAC)** [39] that it was more probable than not that it was a marriage of convenience. The judge erred because he failed to adequately consider the totality of the information and evidence before him.
4. Judge Cruthers in a decision dated 26 July 2017, found that the grounds did not identify any arguable error of law. He found that the grounds did not establish that a grant of permission would be appropriate. As regards the appellant's first complaint that the appeal should have been adjourned, the judge dealt more than adequately with that at [5] and [6]. Essentially the judge was being told that the appeal should be delayed because the appellant's spouse was said to be suffering from abdominal pain and drowsiness. Judge Cruthers said it was difficult to see why abdominal pain and drowsiness would have prevented the sponsor attending the hearing if she was in a genuine relationship with the appellant. The judge did not act unfairly in terms of **Nwagwe (Adjournment: fairness) [2014] UKUT 00418 (IAC)** and/or **SH (Afghanistan) [2011] EWCA Civ 1284**. See [13]. More generally, Judge Cruthers found that the grounds amounted to no more than an attempt to quarrel with the judge's conclusion that the evidence overall established the respondent's allegation that the appellant's marriage was one of convenience.
5. The grounds were resubmitted. Upper Tribunal Judge O'Connor found on 13 September 2017 that it was arguable that the First-tier hearing was vitiated by procedural unfairness. The reasons read inter alia:

"The FTT refused to adjourn the hearing of the appeal (set down for 22 December 2016) in the face of medical evidence from a qualified medical practitioner dated 6 December 2016 stating that the appellant's spouse was 'not to go through court proceedings this month'. The reasons underpinning the FTT's refusal of the application to adjourn can be resolved into a rejection of the evidence as to the appellant's wife's fitness to attend. Such reasoning is arguably irrational or, alternatively, it is arguable that the FTT failed to take account of the aforementioned evidence. All grounds may be argued."
6. The respondent lodged a Rule 24 response on 4 October 2017. It was argued that the onus was on the appellant to show that the partner was unable to attend the hearing. The judge was satisfied that the previous application for an adjournment was refused and there was no evidence before him that the partner could not attend the court as considered between paragraphs 5 and 6 of the decision. Such a decision was open to the judge based on the evidence.

Submissions on Error of Law

7. Mr Janjua relied upon the grounds. He submitted that there was cogent evidence that the sponsor's medical condition was such that she was unable to attend the hearing. As a result and bearing in mind **Nwaigwe**, the judge should have adjourned the hearing.
8. Mr Tufan relied upon the Rule 24 response. He submitted that the onus was on the appellant to show that the sponsor was medically unable to attend the hearing such that the judge directed himself appropriately.

Conclusion on Error of Law

9. It is instructive to set out the history of events prior to the hearing on 22 December 2016 before the judge. Morden Solicitors wrote to the Tribunal on 8 December 2016. Because of a difficult pregnancy the sponsor would be unable to give evidence. A letter from the GP, Dr Saidi Syed of the Edith Cavell Surgery dated 6 December 2016 was attached. It reads inter alia as follows:

"This is to certify that Ms Lakatas has severe back pains in pregnancy, an infection and is also suffering from daily migraines. She is in poor health and is not to go through proceedings this month. I have prescribed her painkillers which will make her drowsy.

I would be grateful if this can be taken into account."

10. The application for an adjournment was considered and refused on 8 December 2016. Inter alia, the refusal reads as follows:

"The sponsor can give a witness statement if she is unable to attend court. It is noted that the doctor who signed the certificate is Dr Z Syed but the list of doctors at the practice refers to Dr R Saed. Please explain."

11. Morden Solicitors wrote again to the Tribunal on 12 December 2016 attaching a further report from the Edith Cavell Surgery. It reads as follows:

"This is to certify that Dr Syed Zaidi is a full-time GP at Edith Cavell Surgery and was in fact the same doctor that wrote to you previously with the initials Dr Z Syed. Liliانا Lakatas was last seen by Dr Zaidi on 6 December 2016.

I would be grateful if this could be taken into account. Sorry for the inconvenience caused."

The letter is signed by Dr Syed Zaidi.

12. Morden Solicitors said in their letter of 12 December 2016 inter alia as follows:

"We write further to your letter dated 8 December 2016. In response to your query regarding the GP who signed the medical certificate,

please note that GP's name is available on their website. A letter has been provided confirming this.

Furthermore we also submit that our client's spouse Mrs Liliana Lakatas is in a condition that she cannot come to our office to give a statement. It is again submitted that she is having a difficult pregnancy and is suffering from dizziness, an infection, severe back pain and migraines. She is currently taking medication which make her drowsy. She has had a history of difficult pregnancy and she was advised by the doctor to have an abortion/miscarriage July 2015 because she suffered an ectopic pregnancy. If she is unable to give evidence or give a statement, this may have a detrimental effect on our client's case."

13. The application to adjourn was again refused but repeated on behalf of the appellant at the hearing. See [5] of the decision of the judge. The judge took into account the adjournment application history and the new sick note provided, that the sponsor was suffering from abdominal pain. Relying upon what had gone before, the judge did not reconsider that evidence but in considering the sick note said as follows:

"The sick note states that Miss Liliana Lakatas (EEA national sponsor) is suffering from abdominal pain. The notes does not state as to whether the witness is unable to attend court and not why not. In these circumstances the adjournment request is refused as it is not in the interest of justice to do so." See [6].

14. Whatever suspicions the judge might have had regarding the genuineness of the symptoms complained of and the nature of the contents of the medical reports, he was obliged to reconsider the reasons for the refusal of the adjournment of the hearing as well as the sick note handed up. The judge was clearly suspicious regarding both the genuineness of the marriage as well as his concerns regarding the medical evidence. Nevertheless, I do find it was incumbent upon him to engage with the same and, in my view, his absence to do so was a material error of law.
15. The appeal will be remitted to the First-tier Tribunal to be heard de novo when, on this occasion, it will be incumbent upon both the appellant and the sponsor Ms Liliana Lakatas to attend to give oral evidence.

Notice of Decision

The First-tier Tribunal made a material error of law. I set aside the decision and remit the appeal to the First-tier for a de novo hearing.

Signed

Date 14 November 2017

Deputy Upper Tribunal Judge Peart