Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: EA/06930/2018

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 5 September 2019	**On 17 September 2019**

Before

UPPER TRIBUNAL JUDGE STEPHEN SMITH

Between

JK
(ANONYMITY DIRECTION MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr G. Davison, Counsel instructed by Pioneer Solicitors
For the Respondent: Mr E. Tufan, Senior Home Office Presenting Officer

REMAKING DECISION

1. The appellant, JK is a citizen of Pakistan born 1 August 1988. He appeals against a decision of the respondent dated 10 October 2018 to refuse his application for a residence card as the family member of an EEA national, submitted on 21st of May 2018. The basis of the refusal was that the marriage of the appellant to his Romanian husband, AM ("the sponsor"), was one of convenience. The respondent's decision, and the reasons for it, were set out in a reasons for refusal letter of the same date ("the RFRL").

2. The appellant initially appealed against that decision to the First-tier Tribunal. In a decision promulgated on 15 March 2019, Judge Devitte dismissed the appellant's appeal. In an error of law decision promulgated on 1 July 2019, a panel of the Upper Tribunal (Upper Tribunal Judge Finch, Upper Tribunal Judge Stephen Smith) found that Judge Devitte had erred in law, such that his decision needed to be set aside. We directed that the appeal be reheard in the Upper Tribunal. No findings of fact of Judge Devitte were preserved.

Immigration history

3. The appellant was granted leave to remain from 29 August 2013 to 10 April 2015 as a student. He overstayed and was later issued with removal papers, before claiming asylum on 23 October 2015. That application was refused, and on 8 January 2016 Judge Moxon dismissed the appellant's appeal against that refusal.

4. On 10 May 2018, the appellant married AM, whose date of birth is 17 April 1996. On 21 May 2018, the appellant applied for a residence card. He and his husband were invited to marriage interviews on 27 September 2018. On 10 October 2018, the appellant's application for a residence card was refused, and it is that refusal decision which the appellant now appeals against in these proceedings.

Appellant's case and Reasons for Refusal Letter

5. The appellant applied for a residence card under the Immigration (European Economic Area) Regulations 2016 ("the 2016 Regulations") as the spouse of AM. He contended that AM enjoyed a right to reside under the 2016 Regulations and, as such, he was entitled to a right to reside in his own capacity.

6. Before taking the decision to refuse the appellant's residence card application, the respondent invited the appellant and the sponsor to marriage interviews. She was concerned that the marriage was one of convenience.

7. The RFRL considers there to be a number of discrepancies in the answers that the appellant and sponsor gave in their marriage interviews. The sponsor had not been able to name any of the appellant's family members, attributing this to an unwillingness on the part of the appellant to discuss matters involving his family, due to the difficult relationship he had with them. The applicant did not know the name of the sponsor's mother, and although the sponsor claimed to be in frequent contact with his sister and mother, the applicant had not spoken to either. The respondent rejected the sponsor's explanation for this, namely that neither his mother nor his sister could speak English, as she considered that the sponsor would have been able to translate for the appellant.

8. "Most significantly", considers the RFRL, "both the applicant and the sponsor new nothing of the applicants [sic] life between his entry into the UK in 2012 on a student visa and when they first met in 2017." Both the appellant and sponsor maintained that this was a period about which they had little discussion. Neither knew anything about the previous relationship history of the other, which was "notable" given the

appellant's previously failed asylum claim on the basis of his claimed homosexuality. Details the appellant had provided in the marriage interview concerning his previous relationship with one FJ were inconsistent with his account that he provided as part of his asylum claim. Neither party could remember the date of their marriage proposal, and the sponsor could not remember where it had taken place.

9. The appellant and sponsor claimed to share the same accommodation. Whereas the appellant said that the sponsor would regularly speak to their housemates concerning practical matters of household maintenance, the sponsor himself said that he did not know the names of the other people in their shared house and had no real interest in them. Neither party recognised the name Hugo Moguel Lopes when it was put to them during their interviews; this was significant, as Mr Lopes was listed on the tenancy agreement as both a witness to their signing it, and as a fellow resident at the shared address.

10. The letter noted that there were some credible answers concerning matters such as the sponsor's work and healthcare but considered that those were "areas that can be easily prepared in advance." Accordingly, based on those discrepancies, the RFRL concluded that the relationship between the appellant and sponsor was one of convenience.

11. Against that background, it is the appellant's case that there are a remarkable number of consistent answers across both marriage interviews. He contends that many of the answers seized upon by the respondent have been taken out of context, and that the interviewing officer appeared to have in mind his or her questions being answered in a certain way, appearing to be dissatisfied when the closed questions he or she put to each interviewee were not answered in the manner envisaged.

Legal framework

12. Regulation 18(1) of the 2016 Regulations governs the issue of a residence card. It provides, where relevant:

> "(1) The Secretary of State must issue a residence card to a person who is not an EEA national and is the family member of a qualified person or of an EEA national with a right of permanent residence under regulation 15 on application and production of—
>
> (a) a valid passport; and
>
> (b) proof that the applicant is such a family member."

13. "Family member" is defined by regulation 7(1)(a) to include the spouse of an EEA national. A "spouse" does not include a party to a "marriage of convenience" (see regulation 2(1)). Regulation 2(1) also states:

> "'marriage of convenience' includes a marriage entered into for the purpose of using these Regulations, or any other right conferred by the EU Treaties, as a means to circumvent—

> (a) immigration rules applying to non-EEA nationals (such as any applicable requirement under the 1971 Act to have leave to enter or remain in the United Kingdom); or
>
> (b) any other criteria that the party to the marriage of convenience would otherwise have to meet in order to enjoy a right to reside under these Regulations or the EU Treaties…"

The key issue to be identified when considering whether a marriage is one of convenience is the purpose for which the marriage was entered, at the time it was contracted. Was the sole purpose (as in the predominant purpose, rather than the unique or exclusive purpose: see the European Commission's Handbook on addressing the issues of alleged marriages of convenience, 24 September 2014, (COM (2014) 604 final), at page 9; see also Recital (28) to Directive 2004/38/EC) in order to enjoy free movement rights to which the individual would not otherwise be entitled? The intention of the parties at the time of the marriage is the key issue. Their knowledge about each other, or the extent to which the marriage is genuine and subsisting at the date of assessment are not determinative, although are likely to be relevant evidential factors to consider when looking back to ascertain the purposes for which the marriage was entered into.

Burden and standard of proof

14. It is for the appellant to demonstrate that he meets the criteria in regulation 18 to the balance of probabilities standard. In the first instance, he does not have to demonstrate that the marriage is not one of convenience.

15. Where the respondent alleges that a marriage is one of convenience, the legal burden rests on him to demonstrate that the marriage falls into that category: see Papajorgji (EEA spouse – marriage of convenience) Greece [2012] UKUT 00038(IAC), Agho v Secretary of State for the Home Department [2015] EWCA Civ 1198 at, e.g., [13], and Sadovska v Secretary of State for the Home Department [2017] UKSC 54 at, e.g., [28]. That burden is not discharged merely by demonstrating there to be a "reasonable suspicion" that the marriage is not genuine, although if he does so, the appellant will be expected to respond to the allegation: see Rosa v Secretary of State for the Home Department [2016] EWCA Civ 14 at [24] to [27] . In those circumstances, the evidential burden shifts to the appellant. The basic rule is this: "he who asserts must prove" (Sadovska at [28], per Lady Hale). There is only one standard of proof, and that is the civil standard.

Evidence and documents

16. The appellant relied on his bundle from the hearing before Judge Devitte. Mr Davison provided a helpful skeleton argument, which I have considered.

17. The appellant and sponsor adopted their statements and were cross-examined. A full record of their evidence can be found in the Record of Proceedings on the Tribunal's file; I will outline the salient parts of their evidence, to the extent necessary to do so to give reasons for my findings.

Findings

18. I reached the following findings having considered the all the evidence in the case in the round, in accordance with the burden and standard of proof set out above.

19. At the outset, I acknowledge that there is a degree of consistency in the answers to many of the questions put to the sponsor and appellant in their interviews. The RFRL itself accepts that the couple provided credible answers to questions concerning their recent lives together. For example, both gave consistent answers concerning the appellant's kidney stone problems and related medication, working patterns, and photographs provided in support of the application. Mr Davison's skeleton argument sets out some of the areas of consistency, and I will return to them later.

20. However, for the purposes of the initial evidential burden being discharged by the Secretary of State, I accept that the respondent has demonstrated that there is a reasonable suspicion that the marriage between the appellant and sponsor is one of convenience. I set out my reasons for this below.

21. The presenting officer highlighted the findings of Judge Moxon concerning the appellant's homosexuality in the appellant's asylum appeal. Judge Moxon's findings included a robust rejection of the appellant's claimed homosexuality in these terms:

> "I do not find the appellant to be a credible witness… Having balanced the evidence in the case, I do not find the appellant to be credible and I find it far more likely than not that he is not homosexual. I do not accept the factual background that he as [sic] presented." (Paragraph 49)

Significantly for present purposes, Judge Moxon expressed her findings in terms which went beyond the lower standard of proof usually applicable to establishing a protection claim. By finding that it was "far more likely than not" that the appellant was not gay, judge made a finding which is, in principle, a sound basis for the respondent to have concerns that claims by the appellant to now be in a gay marriage may be questionable. The findings of Judge Moxon represent the starting point for my analysis: Devaseelan (Second Appeals - ECHR - Extra-Territorial Effect) Sri Lanka * [2002] UKIAT 00702. For the purposes of establishing the presence of a reasonable suspicion concerning the (gay) marriage of convenience issue, this judicial finding of fact that the appellant is not gay is a relevant factor.

22. I set out below the basis upon which I accept that some of the concerns outlined in the RFRL based on the marriage interviews are sufficient to establish a reasonable suspicion that the marriage is one of convenience.

23. In principle, it is reasonable to expect one party of a marriage to know the names of the family members of their spouse, or to have consistent explanations of why they do not. At questions 117 to 136 of the sponsor's interview, the sponsor was unable to name family members of the appellant and stated that he, the sponsor, had not told the appellant the names of his own family members (questions 118, 119). He said the appellant could not speak to the sponsor's mother and sister, the only members of his

family the sponsor was in contact with (question 132), due to the language barrier (question 135). They do not speak English, and the appellant does not speak Romanian.

24. By contrast, in his interview, the appellant said that the reason he was unsure of the names was because "Romanian names are difficult to remember" (question 128), rather than because he had not been told by the sponsor. At question 132, the appellant said that the sponsor's sister did speak English, but that neither his father nor his mother could do so. Accordingly, the reasons given for the appellant not speaking to the sponsor's family differed. In fairness to the appellant, he did provide what he thought were the names of the appellant's parents and sister (question 129). What is of greater concern, however, is the inconsistencies across the answers of each concerning why the appellant did not speak to the sponsor's family.

25. The appellant had "no idea" (question 132) if the sponsor's parents knew about their relationship, as he had never asked, "because he [the sponsor] is obviously 22 years old and he said whatever I am doing I can take the decision…" I have some credibility concerns with this answer, as it is not indicative of the depth of knowledge that one party to a marriage could reasonably be expected to know about how much the other party's wider family know about the marriage. That is not to say that the sponsor's parents had to know about the marriage; it could quite legitimately have been kept from them. But, even if that were the case, the appellant could reasonably be expected to know if it had, or if it had not. It is his ambivalence that presents credibility concerns, rather than the fact the sponsor's family may or may not have been told.

26. I agree with the RFRL that the fact that the appellant said that he had not discussed his life in the United Kingdom from 2012 until they met in 2017 with the sponsor (question 153) also gives rise to a reasonable suspicion. The parties to the marriage are each from countries other than the United Kingdom and have sought to make their home here. They will share in common the experience of seeking to establish themselves in countries other than those of their nationality and are from very different cultural backgrounds. It is reasonable for a married couple to have at least some knowledge of what the other was doing in the years while resident in their host country before they met, and to at least have discussed their respective experiences in establishing themselves here.

27. The couple also purport not to have discussed past relationships during this time. At question 204 of the appellant's interview, the appellant said he had never asked the sponsor. At question 205, he said that he could not imagine the sponsor with anyone else, and that was why he had never asked him. Similarly, the sponsor had not asked him about his own past relationships (question 207).

28. For the couple not to have even addressed in conversation what took place during the appellant's residence in the United Kingdom prior to their marriage contributes to the reasonable grounds for suspicion relied upon by the Secretary of State.

29. At questions 299 to 305 of the appellant's interview, he did not know about Hugo Moguel Lopes, who, according to the RFRL (and not disputed by the appellant) was a fellow tenant at the house he claimed to share with the sponsor and had witnessed his signature to their tenancy agreement. At questions 340 to 347 of the sponsor's interview, he did not know the names of any of the other people who shared the multiple occupancy house they lived in. I accept that this gives rise to suspicion that the living arrangements were not as claimed, which in turn contributes to the reasonable suspicion that the marriage may be one of convenience.

30. I consider the account each provided in interview of the proposal to have been vague and lacking in detail, to the point of being evasive. In the appellant's interview, the following exchange is recorded at question 405. It is necessary to repeat it in full:

> "Q: Talk to me about the proposal. When did it happen, where did it happen, who proposed to who?
>
> A: Obviously, he proposed me and when we moved in the house, obviously we were in a relationship, and then we were going like that, going like that, going like that, so many times when it comes to if he can… He had the holidays, obviously, I was staying home. So if we can travel, for example, obviously we can't."

As may be seen from this extract, the answer provided by the appellant – who has a strong command of English – does not address the question and lacks coherence. Of course, he may have misunderstood the question. The interviewing officer was clearly live that possibility too, and so put the question to the appellant on a number of further occasions. At questions 406, 411, 412, and 413 the appellant was repeatedly asked as to when they got engaged. I consider the answers to these questions to be similarly evasive, with the appellant eventually stating that the got engaged in 2017, with no specificity as to the date, not even the month or season. I agree with the respondent that the lack of specificity concerning when they got engaged, combined with the general evasiveness of the answers provided by the appellant, contributes to their being reasonable grounds for suspicion concerning whether the marriage is one of convenience.

31. At questions 425 and following of the sponsor's interview, the sponsor said that he had proposed marriage to the appellant. He could not remember where, nor when, nor what time it was. All the sponsor could remember was that he had made the proposal, and that it had taken place inside, rather than outside. The appellant could not remember when the proposal had taken place either, but was able to say that he thought it was in their bedroom, rather than being as part of a formal occasion. There were some significant differences in the detail that they could remember in the accounts of their engagement:

Sponsor	Proposed with an engagement ring (question 434)
Appellant	The sponsor did not propose with an engagement ring (question 426), and provided only a marriage ring (question 425)

Clearly, these are significantly different answers. The presence and role of an engagement ring is an important and significant feature of a marriage proposal.

There need not be one involved; but, given the significance of an engagement ring, if the parties are inconsistent on this key point, it raises credibility concerns. Those concerns are compounded where, as here, the parties cannot remember the basic details of the event itself.

32. Balancing the above consistencies against the inconsistencies outlined above, I find that the respondent has discharged the initial evidential burden of demonstrating that there are reasonable grounds to suspect that this marriage is one of convenience. The presence of the consistencies as outlined above do not, at this stage in the analysis, sufficiently mitigate against the presence of the reasonable suspicion revealed by the inconsistencies outlined above.

Appellant's response to the respondent's case against him: shifting evidential burden

33. In cases where the respondent alleges there to be a marriage of convenience, an evidential pendulum is engaged. The initial evidential burden rests upon the respondent to demonstrate that there are reasonable grounds for suspecting the marriage to be one of convenience. Where the respondent establishes such reasonable grounds for suspicion, the pendulum swings, and it will be for appellant to provide an answer to those allegations. That is the effect of the findings I have outlined above. I find the respondent has established the allegations she makes against the appellant for the purposes of calling for an explanation.

34. The response the appellant provides to the allegations raised by the respondent is to point to the consistencies in the marriage interviews, their documentary evidence of cohabitation, and their written and oral evidence before me. Their banking details are registered to the same address, some of their utilities are in joint names, and they now have a tenancy agreement together on a property in Woking, a copy of which is in the bundle.

35. I agree that there was a degree of consistency across other answers provided by the sponsor and the appellant. At [13] of his skeleton argument, Mr Davison summarises the similarities in the answers provided by each party to the marriage across their two extensive interviews. These areas include the employment of the sponsor, his wages, his working pattern, the appearance of his uniform, the way he travels to work, where he worked previously, the reasons he left that employment. There was also consistency concerning the appellant's work, and visits made by the sponsor to it. There was some consistency across the reasons given for why neither party knew details of the other's family, the dates of arrival to the United Kingdom, the religious beliefs of each party, medical conditions, the last movie they went to see together, and the type of utilities the couple consumed in their shared accommodation.

36. The question for my consideration is whether the response to the allegations made by the respondent provided by the appellant is sufficient to provide an innocent explanation for the case against him. In addressing this question, it is necessary to recall that, although there is only one standard of proof, namely the civil standard, stronger evidence is likely to be necessary to establish a charge of this gravity, given the inherent improbability of the underlying deception which is inherent to the

respondent's case. However the evidential pendulum may swing, the respondent bears the legal burden of establishing a marriage of convenience at all times.

37. In their oral evidence before me, the appellant and sponsor were asked whether they had been to the cinema recently. They both said that the most recent film they had seen had been *Fast and Furious*, and that they viewed it at the Odeon in the Westfield at Stratford. The appellant said that it had been "last month", and the sponsor said that it had been "2 to 3 weeks ago". They are now residing at a different address to the one in Woking, but still live together.

38. I agree with the submissions of Mr Davison that there is a degree of consistency between the answers the appellant and the sponsor gave in their interviews. In addition, there evidence before me was also consistent. Both appellant and sponsor were able accurately to recall their most recent cinema trip together.

39. The difficulty with the consistency demonstrated by both parties to the marriage is that it all relates to relatively recent events in their history. A phenomenon of those who enter into marriages of convenience is that they are able to prepare consistent answers across a range of everyday, recent, matters. Indeed, cases where there is no consistency are relatively rare. Those in marriages of convenience who are expecting to face a challenge concerning the purposes for which they entered into their marriage are likely to be able to learn a large degree of information about the other party. Although details concerning the past can be learnt, the further back such attempts seek to go, the harder it gets. Recent consistency is much easier to establish. The question for my analysis is whether the contemporary consistency provided by the appellant and sponsor in relation to the matters outlined in Mr Davison's skeleton argument, outlined at paragraph 38, above, is sufficient to outweigh the reasonable grounds for suspicion established by the respondent.

40. I consider that it is possible, in broad terms, to categorise the areas of consistency between the answers provided by the appellant and sponsor as relating to recent developments and events in their relationship. By contrast, the areas in the interviews in relation to which their answers were less impressive and gave rise to reasonable suspicion, as outlined above, related to the earlier – foundational – stages of their relationship, and the absence of knowledge on the part of each other about events which preceded their relationship. For example, the contemporaneous evidence appears to suggest a degree of cohabitation. However, during their interviews, the appellant and sponsor had difficulty recognising the name of Mr Lopes, despite the fact he was listed as a fellow tenant in their then shared home. Similarly, the knowledge of each concerning the remaining housemates in that house was limited.

41. That both parties have struggled to provide a coherent and consistent account of the events surrounding, and preceding, their engagement, or their then living arrangements, are indications that the respondent has discharged the burden of demonstrating that this is a marriage of convenience.

42. The appellant and sponsor provided different answers concerning why the appellant does not speak to family members of the sponsor; the sponsor claimed it was because his family members did not speak English, whereas the appellant said that the sponsor's sister *did* speak English.

43. In their statements, the appellant and sponsor say that they did not know about their respective pasts because, "we had both made it clear to the Respondent that we had decided not to know of each other's past" (appellant's statement, paragraph 12; sponsor's statement, paragraph 8, third unnumbered bullet point). That is not what they said in their interviews:

    a. The sponsor responded to questions on this point by saying, for example, "…why should I care about the past when we are on the present?" (question 140) and, "We are focussed on the future and on the present, not on what happen back [sic]" (question 141) and, "It's all past, why should I bring it up…" (question 141).

    b. The appellant said that they had never discussed matters about their pasts (question 205), and that the reason he had never asked the sponsor was, "I know it is very difficult to believe, but I don't imagine him with someone else in the past" (question 206).

    There was no suggestion in their interview answers that there had been any form of mutual decision not to address their pasts. The sponsor simply stated that there had been a natural focus on the present and the future, and the appellant said he had not addressed the issue because he could not imagine the sponsor with anyone else. The explanations given in the statements do not accord with the answers provided in interview. They appear to be retrospective attempts to rationalise what they each said in their interviews, rather than explanations that were consistent with what they each said. This presents credibility concerns.

44. It is concerning that the appellant had "no idea" concerning whether the sponsor's family had any awareness of their marriage. As outlined at paragraph 25, above, the ambivalence is what is concerning, rather than the simple fact that the sponsor may not have told his parents of their marriage. I also have concerns that they each had only minimal knowledge of the other's family. I accept that the appellant provided three names, for the sponsor's mother, father and sister. But even then, he was unsure. The sponsor and appellant gave different reasons for why the appellant did not know the sponsor's family. In their statements, the appellant and sponsor suggested that they had "mutually decided" not to get to know each other's families (appellant's statement, page 13, sponsor's statement, page 20, subheading "Reason Four"). That is not what they said during their interviews, where the reasons given for the appellant not knowing the sponsor's parents were that Romanian names were difficult to remember (appellant's explanation) and the sponsor's parents did not speak English (sponsor's explanation): see the analysis in paragraphs 24 and 42, above.

45. I do not accept that it is credible that the appellant had not revealed to the sponsor his previous immigration difficulties, and the attempt he had made in order to claim asylum based upon his sexual orientation. These were significant events in the relatively recent life of the appellant. The appellant stood to gain a significant immigration advantage from the marriage, making it all the more concerning that he had not even remarked or otherwise observed to the sponsor that he had previously encountered such difficulties.

46. Of course, the mere fact that a marriage would bring with it immigration advantages does not necessarily render it to be one of convenience; the question for my consideration is whether the *sole or predominant* purpose of the marriage was for the appellant to avoid being subject to the requirements of immigration control which would otherwise apply. For the purposes of this analysis, however, the notion that the appellant and sponsor had never considered such matters is concerning and lacks credibility. It suggests either that the couple have not been entirely open about their knowledge of each other (which presents credibility concerns when assessing their evidence claiming the marriage is not one of convenience), or that they do not have the depth of knowledge and insight which would reasonably be expected in a marriage situation (thereby contributing to concerns that the marriage may be one of convenience). Of course, marriages come in many forms. It is with hesitation that I conclude that all married couples would be likely to reveal certain matters to each other. All couples are different. As such, this is not a factor which, in isolation, would support a finding that the marriage is one of convenience; but considered in the round, along with the other evidence, is a contributing factor.

47. I agree with the respondent that it is concerning that the appellant and sponsor could not recall when they got engaged, nor any detail as to the circumstances of the proposal. Whereas the sponsor said no engagement ring was involved, the appellant said that there was an engagement ring. I have credibility concerns with the notion that a married couple would not be able to remember the dates of their engagement, and those concerns are compounded by the significantly different accounts each gave concerning the presence of an engagement ring. Again, I recall that all couples are different. I should be slow to impose my subjective expectations about how a married couple would behave. However, when viewed alongside the remaining evidence, in the round, this is a factor. I also recall that the answers the appellant gave in his interview on this point were vague and evasive, as outlined above.

48. These concerns are all set against the earlier findings of Judge Moxon that the appellant is not gay. As stated above, I am not bound by that decision. I would have no hesitation in departing from it, if it were the case that the evidence in the case – which all post-dates Judge Moxon's findings – required me to do so. However, for the reasons set out above, I have significant credibility concerns with many aspects of the account provided by the appellant and the sponsor. There has been no evidence which post-dates Judge Moxon's findings that either enables or requires me to adopt a different approach. Judge Moxon's findings therefore form a significant part of my analysis.

49. Having considered the entirety of the evidence in the round, therefore, I do not accept that the appellant has provided a sufficient response to the allegations properly raised against him by the respondent. He has failed to discharge the evidential burden that transferred to him. Many of the answers that he and the sponsor provided had the effect of augmenting the case against him, for example the inconsistencies surrounding the engagement ring, or the answers that lacked credibility surrounding the proposal, or the sponsor's lack of knowledge of the appellant's prior history in the United Kingdom. What consistencies there were in the accounts provided by the appellant and sponsor related to events that were relatively recent to the marriage interviews and the remaking hearing before me, and did not have the effect of confirming the history or depth of the relationship, in response to the respondent's properly-made allegations. The consistency is in relation to recent events which would be easy to orchestrate.

50. The overall effect of the inconsistencies and the answers that lack credibility is that I am satisfied that the respondent has discharged her overall legal burden of demonstrating that the marriage is one of convenience. The findings outlined above provide a lens through which the intention of the parties at the time of their marriage may be viewed. The appellant was, and has been, without leave for some time. He claimed asylum on the basis of his homosexuality once he had been served with removal papers, but was found by Judge Moxon not to be gay and to lack credibility. In the face of removal, in need of a basis to regularise his stay, he entered into a marriage of convenience with the sponsor. Both he and the sponsor know little of each other's backgrounds or families and were unable to illuminate their marriage with anything getting close to the detail which would characterise a genuine marriage. While some aspects of their interviews were consistent, as was their evidence concerning recent developments in their relationship, the crucial early stages of the relationship, or basic details about their respective backgrounds and histories, were not substantiated in their interviews. Their answers undermined their case to be in a genuine marriage, for the reasons outlined above. The chronology demonstrates that the appellant applied for the residence card very shortly after getting married. He did so because he had married the sponsor for the predominant purpose of circumventing the requirements of immigration control, to which he was subject. He had every reason to do so and has not been able to provide a satisfactory innocent explanation to the allegations against him raised by the respondent. I am satisfied to the balance of probabilities standard that the respondent's allegations have been established.

Conclusion

51. As the appellant is a party to a marriage of convenience, he does not meet the definition of "spouse" in regulation 2(1) of the 2016 Regulations. He is not, therefore, entitled to a residence card to attest to his status as a "family member" of an EEA national, and his appeal against the respondent's refusal to issue him with a residence card is dismissed.

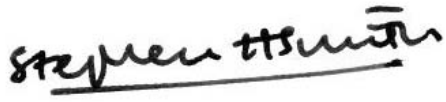
52. The anonymity order made by Judge Moxon remains in force.

Notice of Decision

This appeal is dismissed on EU law grounds.

Direction Regarding Anonymity – Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

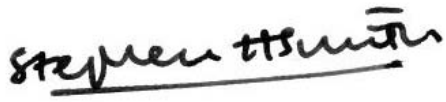
Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed  Date 6 September 2019

Upper Tribunal Judge Stephen Smith

TO THE RESPONDENT
FEE AWARD

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

Signed  Date 6 September 2019

Upper Tribunal Judge Stephen Smith