



**Upper Tribunal
(Immigration and Asylum Chamber)
EA/07181/2016**

Appeal Number:

THE IMMIGRATION ACTS

**Heard at Field House
On 1st July 2019**

**Decision & Reasons
Promulgated On 4th July
2019**

Before

**UPPER TRIBUNAL JUDGE BLUM
UPPER TRIBUNAL JUDGE MANDALIA**

Between

MR MUMRAIZ ASGHAR

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Atcha, Ebrahim & Co Solicitors

For the Respondent: Mr Avery, Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal against a decision and reasons promulgated by First-tier Tribunal ("FtT") Judge Aziz on 19th March 2019, in which he dismissed an appeal, against a decision of the respondent dated 2nd June 2016, to refuse an application for a residence card as confirmation of a right to reside in the UK.

Background

2. The appellant is a national of Pakistan. He arrived in the UK as a visitor on 9th May 2006 and remained in the UK unlawfully when

his visitor visa expired on 9th November 2006. The appellant was encountered by Immigration officials in 2010 and on 11th July 2011, he was married to Ms Gyulezar Brahimbrasheva, a Bulgarian national.

3. The appellant made an application for a residence card as confirmation of the right to reside in the UK, but that application was refused by the respondent in October 2011. The appellant, as he was entitled to, appealed that decision, and his appeal was dismissed for the reasons set out in a decision promulgated by FtT Judge Steer in December 2011. FtT Judge Steer found that the marriage is not genuine. The appellant made a further application for a residence card, but that application was also refused by the respondent, for the reasons set out in a decision of 17th September 2013. The appellant again appealed, and his appeal was dismissed for the reasons set out in a decision by FtT Judge Petherbridge promulgated on 13th November 2014. FtT Judge Petherbridge heard evidence from the appellant, Gyulezar Brahimbrasheva, Khadam Shah, Faiza Malik and Zafar Sultan Kiani. Having considered the findings previously made by FtT Judge Street, and all of the evidence before him, FtT Judge Petherbridge found, at [56], that the appellant was not credible, and that the marriage of the appellant and the sponsor was not genuine or subsisting.
4. Most recently on 20 October 2015 the appellant again applied for an EEA residence card as confirmation of a right to reside in the UK as the spouse of an EEA national exercising treaty rights in the United Kingdom under the Immigration (EEA) Regulations 2006. That application was refused by the respondent for the reasons set out in a decision dated 2nd June 2016 and it was that decision that was the subject of the appeal before FtT Judge Aziz. We pause to note that prior to the hearing of the appeal before FtT Judge Aziz, the appeal had been heard by FtT Judge Andrews, but her decision

was found to be infected by a material error of law and was set aside by Upper Tribunal Judge Grubb in September 2018.

5. In readiness for the hearing of the appeal before FtT Judge Aziz, the appellant's representatives had prepared a bundle of documents relied upon by the appellant comprising of some 310 pages. The respondent had also provided the Tribunal with a bundle that included the previous decisions of FtT Judge Steer and FtT Judge Petherbridge.

The decision of FtT Judge Aziz

6. At paragraph [9] of the decision the FtT Judge refers to the documents relied upon by the appellant in support of his application. At paragraphs [11] and [12] of the decision, the Judge confirms that he had sight of the appellant's bundle served on 12th February 2019. The evidence given by the appellant, is set out at paragraphs [15] to [27] of the decision. The evidence given by Gyulezar Brahimbasheva is set out at paragraphs [28] to [35] of the decision. The FtT Judge also heard evidence from Mr Sajjad Akhtar Shad, the appellant's brother-in-law, and that evidence is set out at paragraphs [36] to 40] of the decision.
7. The Judge's findings of fact and conclusions are set out at paragraphs [50] to [74] of the decision. The Judge considered the previous decisions of FtT Judge Steer and FtT Judge Petherbridge. He noted, at [67] and [68], that:

"67. Ms Atcha acknowledged that *Devaseelan* applied and that the previous two Tribunal's had concluded that the appellant's marriage was one of convenience. She also acknowledged that there were some inconsistencies in the evidence of the appellant and Ms Gyulezar Shefkeveteva Brahimbasheva at this hearing.

68. Her key argument was that this Tribunal now had before it several years evidence of the couple cohabiting and that this evidence was not before the previous Tribunal's. Approximately

five years had passed since that second appeal hearing in 2011 (*sic*).”

8. At paragraph [70] of the decision, the FtT Judge refers to the wealth of evidence relied upon by the appellant. He states:

“I have gone through the evidence of cohabitation contained at pages 77-310 of the appellant’s bundle. They include tenancy agreements, utility bills, bank statements, employment and other correspondence in relation to the various addresses in Luton that the couple claim to have resided at. There are also photographs submitted. In the appellant’s favour, I accept these documents cover a substantial period.”

9. In reaching his decision the FtT Judge took into account the decisions of the previous two Tribunal’s and referred to the decision in Devaseelan. The FtT Judge concluded at paragraphs [72] and [73] as follows:

“72. I have taken into account the additional documentary evidence which has been submitted. This Tribunal is also constrained by the findings of not one but two previous judges. Both in 2011 and 2014 the first-tier tribunal came to a conclusion that the appellant had entered into a marriage of convenience. The decision of these two Tribunal’s was arrived at following discrepancies within the appellant’s and EEA sponsor’s marriage interviews from 2011 and discrepancies in the evidence of the witnesses at the appeal hearings.

73. Whilst there was some consistency in the evidence of the three witnesses at this hearing, there was also inconsistency on a number of matters. In particular, the EEA sponsor asserting that the appellant is not in contact with his children in Pakistan. The appellant stated that he was in contact with them and it is reasonable to conclude that if the merge was genuine that she would be aware of this. I found Mr Sajjad Akhtar Sha to be of limited assistance. During cross examination, he was vague and unclear in a number of his answers.”

The appeal before us

10. Permission to appeal was granted by FtT Judge Simpson on 23rd May 2019. The matter comes before us to consider whether the decision of the FtT involved the making of a material error of law, and if so, to remake the decision.

11. The written grounds of appeal are incoherent, but Ms Atcha confirmed that there are two grounds of appeal. First the FtT Judge failed to have any proper regard to the substantial volume of evidence that was provided to the Tribunal to support the appellant's claim that his marriage to Ms Gyulezar Brahimbasheva is a genuine one. Ms Atcha submits that the FtT Judge should have attached more weight to the documents and photographs that demonstrate that the appellant and his wife remain in a happy marriage. She submits that the appellant and Ms Brahimbasheva have persisted in their endeavour to persuade the Tribunal of the genuineness of their relationship and marriage because it is a genuine marriage, and it would make no sense for Ms Brahimbasheva to continue to support the appellant in this appeal if, as the respondent claims, and the FtT Judge found, the marriage is not a genuine one.
12. Second, the FtT Judge should have attached greater weight to the evidence of the appellant, Ms Brahimbasheva, and the appellant's brother-in-law, who all gave evidence that the marriage is a genuine one. Ms Atcha submits that there are minor discrepancies in the evidence given by the appellant and Ms Brahimbasheva, but she submits, that is to be expected, and does not undermine their claim to be in a genuine marriage.

Discussion

13. We reject the claim that FtT Judge Aziz failed to have proper regard to the evidence set out in the appellant's bundle comprising some 310 pages. Ms Atcha confirmed that all of the evidence relied upon by the appellant was contained within that bundle. It is right to say that there is a wealth of evidence that demonstrates that the appellant and Ms Brahimbasheva reside at the same address, but that is, as the FtT Judge noted at [70], evidence of cohabitation. The Judge accepted that the evidence of

cohabitation covers a substantial period. We invited Ms Atcha to draw our attention to the evidence that was before the FtT Judge and capable of demonstrating a relationship between the appellant and Ms Brahimbasheva, rather than evidence of cohabitation at the same address. Ms Atcha referred us to a document at page [279] of the appellant's bundle. That is a document from the Luton and Dunstable Hospital NHS Trust Emergency Department, dated 21st November 2013, naming Ms Brahimbasheva as the appellant's 'next of kin'. Beside the photographs relied upon as evidence of their relationship, that was the only document that Ms Atcha was able to draw our attention to.

14. We have carefully considered for ourselves the evidence that was relied upon by the appellant and set out at pages [56] to [310] of the appellant's bundle. In our judgement, it is clear from paragraph [70] of his decision, that the FtT Judge had regard to that evidence. The Judge was prepared to accept that there was evidence of cohabitation covering a substantial period. It does not follow that the Judge was bound to accept that the evidence is evidence of a genuine marriage. Despite the passage of time, the appellant is only able to point to one document that is dated November 2013, in which Ms Brahimbasheva is named as the appellant's next of kin. That must be weighed against all the other evidence before the Tribunal, including the oral evidence of the witnesses.
15. In reaching his decision, the FtT Judge had regard to a number of factors. The FtT Judge noted that in 2011, the appellant and Ms Brahimbasheva were invited to an interview and the respondent had highlighted a number of discrepancies in the answers given by them. He noted that FtT Judge Steer had previously considered those inconsistencies and had also noted further inconsistencies and anomalies in the evidence received by the Tribunal, that in

the end, lead FtT Judge Steer to find that the appellant's marriage to Ms Brahimbasheva is not genuine. FtT Judge Aziz noted FtT Judge Petherbridge had reached a similar conclusion in the 2014 appeal, having found that there were yet further inconsistencies between the evidence of the appellant and a witness, Faiza Malik, that had given evidence before FtT Judge Pethererton.

16. For his part, FtT Judge Aziz had also identified material anomalies and inconsistencies in the evidence given by the appellant and Ms Brahimbasheva. For reasons that remain unexplained, neither the appellant nor Ms Brahimbasheva are registered with the same GP, but importantly, neither was able to name the GP practice at which the other is registered. The appellant's evidence was that he does speak to his children and that he had last spoken to his children about a month ago, when he called his elder brother. The evidence of Ms Brahimbasheva was that neither she nor the appellant speak to his children.
17. We have carefully considered the criticisms made of the FtT Judge's assessment of the evidence. Here, it cannot be said that the Judge's analysis of the evidence is irrational or perverse. The Judge did not consider irrelevant factors, and the weight that he attached to the evidence either individually or cumulatively, was a matter for him. It was in our judgment open to the FtT Judge to conclude that, although there was some consistency in the evidence of the three witnesses at the hearing of the appeal, there were also inconsistencies on a number of matters, and that in the end, the evidence before the FtT Judge was not such that he should depart from the decision of two previous Tribunals who have both concluded that the appellant's marriage to Ms Brahimbasheva is one of convenience.
18. It follows that we dismiss the appeal.

Notice of Decision

19. The decision of the FtT Judge does not contain any error of law and the appeal is dismissed.

20. No anonymity direction is made.

Notice of Decision

21. The appeal is dismissed.

22. No anonymity direction has been applied for. The FtT made no such direction and we make no anonymity direction.

Signed
2019



Date 1st July

Upper Tribunal Judge Mandalia

TO THE RESPONDENT
FEE AWARD

We have dismissed the appeal and therefore there can be no fee award.

Signed



Date 1st July 2019

Upper Tribunal Judge Mandalia