Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: EA/07602/2018

THE IMMIGRATION ACTS

Heard at Field House	**Determination & Reasons Promulgated**
On Thursday 13th June 2019	**On Wednesday 26th June 2019**

Before

UPPER TRIBUNAL JUDGE SMITH

Between

RESUL [M]

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr N Ahmed, Evolent Law
For the Respondent: Mr T Melvin, Senior Home Office Presenting Officer

DECISION AND REASONS

BACKGROUND

1. The Appellant appeals against a decision of First-tier Tribunal Judge Ford promulgated on 18 February 2019 ("the Decision") dismissing the Appellant's appeal against the Respondent's decision dated 19 November 2018 refusing his application for a residence card as the family member (spouse) of Ms [AMC] who is an EEA (Romanian) national. The Respondent refused the application on the basis that the marriage is one of convenience.

2. The Appellant who is a national of Albania came to the UK in 2016. He claimed asylum in July 2016. His claim was rejected on 21 December 2016 and his appeal dismissed on 24 February 2017. He says that he met Ms [C] on 21 January 2018 in a park. She had come to the UK to work in December 2017. The couple moved in together in March 2018 and married on 13 August 2018. Ms [C] gave birth to a daughter on 19 December 2018.

3. The Appellant made an application for a residence card on 21 August 2018. The Respondent invited the Appellant and Ms [C] to an interview on 7 November 2018. Following that interview and based on inconsistencies in the answers given at the interview, the application was refused.

4. Judge Ford considered the evidence put forward by the Respondent, including the interview record, and the evidence of the parties to the marriage. She concluded that the marriage was one of convenience and dismissed the appeal.

5. The Appellant raises two grounds of appeal. First, it is said that the Judge failed to give sufficient weight to the fact that the couple have a child together. Second, it is said that the Judge, when considering the factors which led her to the conclusion that the marriage is one of convenience, had regard to factors which were not relevant.

6. Permission to appeal was refused by First-tier Tribunal Judge Fisher on 3 April 2019 but granted by Deputy Upper Tribunal Judge McGeachy on 21 May 2019 in the following terms so far as relevant:

> "2. While the judge set out numerous and cogent reasons for the conclusion that the marriage was one of convenience, it is unclear why he did not accept that the fact that the appellant is named on the child's birth certificate indicated that this might not be a marriage of convenience nor, indeed, why he did not resolve the question which is implicit in this case, which is whether or not the child is the child of the appellant.
>
> 3. I therefore grant permission to appeal."

7. The appeal comes before me to determine whether there is a material error of law in the Decision and if so either to re-make the decision or to remit to the First-tier Tribunal to do so.

DISCUSSION AND CONCLUSIONS

Ground One

8. The first ground concerns the weight which the Judge gave to the fact of the birth of Ms [C]'s child. It is suggested at [3] of the grounds that the Judge accepted that the child is the Appellant's and failed to give weight to that factor when assessing whether the marriage was one of convenience. It is said that the parentage of the child was not

disputed. That is not a sustainable reading of the Decision. In relation to the child, the Judge says the following:

> "5. On 19 December 2018 the EEA national gave birth to a daughter [AC] in the UK. The Appellant is named on her birth certificate as her father. The EEA national's name is [AMC].
>
> …
>
> 12. I find that the Respondent has discharged the burden of establishing that this is indeed a marriage of convenience. The evidence that suggests that this is a genuine marriage is as follows:-
>
> …
>
> (e) The Appellant's name appears on the NHS records as the father of the child and he attended some of the prenatal appointments with her
>
> (f) The EEA national gave birth to a daughter on 19 December 2018, some 9 months after cohabitation began and the Appellant is named as the father
>
> 13. The evidence that I consider suggests that it is a marriage of convenience is as follows:-
>
> …
>
> (e) She was pregnant when the couple was married
>
> …
>
> (l) The Appellant and his wife chose to give the EEA national's daughter her mother's surname on the birth certificate even though they were married.
>
> …"

9. Although I accept Mr Ahmed's submission that there is no clear finding that the Appellant is not the father of the child, it is evident from those findings read together that the Judge had considerable doubts whether the child was his. Certainly, it cannot be said that it was accepted that [AMC] was his child.

10. Mr Ahmed said that if the Respondent disputed that the Appellant was the child's father, then he could and should have asked for DNA evidence. However, that ignores that the child was not born at the time of the Respondent's decision and therefore her parentage was not in issue. The Appellant was well aware that the Respondent was disputing the genuineness of the marriage and it was for him to put forward his case to show that the relationship with Ms [C] was genuine as he asserts.

11. Mr Ahmed also submitted that if the Judge intended to find that the child was not the Appellant's, then that point should have been put to the Appellant. That is not pleaded as part of the grounds and therefore there is no evidence about the questions which were or were not asked of the Appellant and Ms [C] about the child including,

for example, why the child has Ms [C]'s surname rather than that of the Appellant.

12. That the Judge did not accept as fact that the child is the Appellant's is relevant to the weight which the Judge had to give that as a factor. The Judge took into account the evidence that the Appellant is the child's father - that he is named as such on the birth certificate and in the NHS records - but was also entitled to take into account evidence pointing in the other direction when deciding what weight to give to this factor.

Ground Two

13. That then brings me on to ground two which concerns three factors on which the Judge placed reliance which the Appellant says are irrelevant. Two of those factors are those set out at [13(e)] and [13(l)] of the Decision which I have already cited above. The third is at [13(f)] as follows:

> "She came to the UK from Romania to get work and was operating on very low margins each month according to her bank statement at page 31."

14. I accept Mr Ahmed's submission that it is difficult to see why the fact that Ms [C] was pregnant before the couple married points to the marriage being one of convenience. It might even provide an alternative explanation for why the couple decided to marry quite soon after meeting. However, the factor relied on at [12(f)] as cited above is a more cogent reason for doubting the genuineness of the relationship and for doubting that the Appellant is the child's father; particularly since Ms [C] said that, until they moved in together, the Appellant had not stayed over at her house because she was not allowed guests (although the Appellant's answer conflicted with this). The inference from [12(f)] and [13(e)] of the Decision read together is that the Judge thought it quite possible that the father of the child was someone other than the Appellant. As such, the fact of Ms [C] being pregnant when the couple married was not an irrelevant factor.

15. I do not accept Mr Ahmed's suggestion that the Judge at [13(l)] was making a cultural assumption about the naming of a child. He is of course right to point out that parents can name their child as they wish. Certainly, if the couple had not been married, then it would be unsurprising if the child's mother had given the child her own surname. However, since they were married, the fact that the child was not given her father's surname at least required some explanation which was not given.

16. Mr Ahmed said that it was difficult to see any relevance of the factor at [13(f)] of the Decision. I disagree. First, the Appellant of course had to show that Ms [C] was in the UK exercising Treaty rights. Second, and in any event, the inference from what is there said when

read with the remainder of the factors at [13] of the Decision is that Ms [C] needed money and might have been encouraged by that need to enter into a marriage for reward.

17. That then brings me on to a further submission made by Mr Ahmed that whether a marriage is one of convenience depends on the motivation of both parties. Even if the Appellant might have been motivated by his immigration position, the same was not necessarily true of Ms [C]. As a proposition of law, I of course accept that the Respondent has to show that the intention of the parties is linked to the immigration status to be gained by the marriage. However, in this case, the findings of the Judge are that neither party was genuinely committed to the other. That appears from all the factors at [13] of the Decision when read together.

18. As Mr Melvin submitted, (and as Judge McGeachy accepted when granting permission), there were "numerous and cogent reasons" which appear at [13] of the Decision for the conclusion that this is a marriage of convenience. As I have indicated, the Judge did not find that the child is the Appellant's (although I accept did not make a clear, adverse finding on the point). However, weighing the evidence that the child might not be his against the evidence that she is, which is confined to what is contained in documents themselves based on what the couple have said is the position, the Judge was entitled to reach the view she did on this aspect and to conclude that, based on the overall evidence including the various discrepancies in the interview answers, the marriage is one of convenience.

CONCLUSION

19. For the above reasons, the Appellant's grounds do not establish any material error of law. I therefore uphold the Decision.

DECISION

I am satisfied that the First-tier Tribunal Decision of Judge Ford promulgated on 18 February 2019 does not contain any material error of law. I therefore uphold the Decision.

Signed Dated: 25 June 2019
Upper Tribunal Judge Smith