



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

Appeal Number: EA/08113/2017

THE IMMIGRATION ACTS

Heard at Manchester CJC

On 26 March 2019

**Decision & Reasons
Promulgated
On 02 April 2019**

Before

UPPER TRIBUNAL JUDGE PLIMMER

Between

MUHAMMAD IBRAHIM

and

Appellant

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the appellant: Ms Faryl, Counsel

For the respondent: Mr Tan, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Pakistan. He married his spouse ('the sponsor'), a Spanish citizen in March 2012. He was subsequently granted a residence card, expiring on 20 October 2017. He divorced the sponsor on 27 March 2017 and shortly after this applied for permanent residence under the Immigration (EEA) Regulations 2016 ('the 2016 Regulations').
2. On 5 September 2017 the respondent refused to grant the appellant permanent residence. The respondent acknowledged that the appellant had previously been issued with a residence card as the spouse of an EEA citizen but said this: "looking at all of the evidence now submitted this

does cast doubt on the genuineness of [the] relationship". The respondent then concluded that the appellant did not provide adequate evidence that his spouse was a qualified person when the marriage was terminated. The respondent did not consider that the evidence relied upon supported the assertion that the sponsor was, as claimed, an employee of the Applicant's cousin, Mr Rafiq ('the cousin') from April 2013. The cousin is said to be the owner of Crystal Shine Motors Ltd ('the company').

3. In grounds of appeal prepared by the appellant's solicitors it was submitted, *inter alia*, that the cousin's home address is [~] Road but that the company operates from Williams Road. The appellant's appeal before the First-tier Tribunal ('FTT') was heard on 9 August 2018. The appellant attended the hearing and relied upon witness statements from himself and the cousin. The cousin did not attend the hearing. The FTT found that the appellant's evidence as well as the cousin's evidence to be "wholly incredible". The FTT found the marriage to be a sham and did not accept that the sponsor exercised Treaty rights at any material time.

The appeal to the Upper Tribunal ('UT')

4. The appellant sought permission to appeal to the UT and relied upon two grounds of appeal drafted by his solicitors.
 - (1) The FTT erred in law in assessing the genuineness of the marriage when this is not a requirement of regulation 10 of the 2016 Regulations, and this tainted his findings regarding the sponsor's employment.
 - (2) The FTT erred in law in finding the cousin incredible when he did not attend the hearing and was not cross-examined.
5. On 1 October 2018, FTT Judge Simpson granted the appellant permission to appeal and made five observations: (i) and (ii) relate to background matters; (iii) correctly points out the absence of a clear legal framework within the decision but as I set out below, the parties agreed there was one crucial issue to be decided by the FTT; (iv) is addressed below; (v) was not the subject of the two pleaded grounds.
6. At the beginning of the hearing before me Ms Faryl indicated that she did not have any of the crucial documents in the appeal including the FTT decision and the grant of permission to appeal. I provided her with copies but indicated that this state of affairs demanded an explanation from her instructing solicitors, together with an assurance that it would not be repeated. I therefore made it clear that the solicitors should provide a written explanation, marked for my attention, within seven days.
7. Ms Faryl relied upon the grounds of appeal and the grant of permission.
8. Mr Tam submitted that the FTT decision may well indicate errors in approach but none of these are material to the central finding: there was

insufficiently credible evidence to support the claim that the sponsor ever exercised Treaty rights.

9. After hearing from both representatives, I reserved my decision which I now provide with reasons.

Error of law discussion

10. Although I invited Ms Faryl to clarify the existing legal framework, she was unable to do so. I summarised my understanding of it, and both parties agreed with this. In order to obtain permanent residence pursuant to regulation 15, the appellant must have resided in the UK in accordance with the 2016 Regulations for five years and at the end of that period must have been a family member who retained the right of residence. Both representatives agreed that in order to retain the rights of residence for the purposes of regulation 10, on the facts of this case, the appellant had to provide sufficient evidence that the sponsor was employed by the cousin. I note that the important date to consider this is the date of commencement of divorce proceedings – see Baigazieva v SSHD [2018] EWCA Civ 1088. However nothing on the facts of this case, turns on the specific date considered.
11. It follows that the crucial issue for determination by the FTT was whether the sponsor was an employee of the company as claimed. In determining that issue, the FTT was entitled to consider all the evidence available to it, including doubts about the relationship itself. Although the FTT expressed itself in a robust and trenchant manner, it was entitled to reject the appellant's claim that the sponsor was an employee as claimed. The reasons provided may not be as clearly expressed as is to be expected in a decision such as this, but they are adequate. In short, the appellant has been provided with adequate reasoning for his submissions on the crucial issue being unsuccessful.
12. First, the FTT did not accept the appellant provided credible evidence. The FTT was entitled to be concerned regarding the conflicting evidence provided regarding the couple's home address.
13. Secondly, as the respondent had raised doubts about the relationship in the decision letter, the FTT was entitled to consider whether the appellant was able to address those concerns. This is not because a genuine relationship before divorce is a requirement in order to obtain permanent residence but because it is relevant to the appellant's general credibility. I note that the decision letter refers to an absence of original documents. This was not rectified at the FTT hearing. The FTT was also entitled to note a complete absence of any credible independent supporting evidence to support the claimed five-year marriage. Although the FTT was not required to consider the genuineness of the marriage for the purposes of a permanent residence application, it was entitled to adjudicate upon the doubts expressed by the respondent and to weigh that in the balance

when making findings on the crucial issue in the appeal. For this reason ground one and the matter raised at (iv) by Judge Simpson in the grant of permission is not well-founded.

14. I entirely accept that in so far as the FTT made an adverse credibility finding against the cousin based entirely upon its assessment of the appellant's evidence, it erred. However when the decision is read as a whole, the FTT was really doing no more than attaching little weight to the cousin's evidence because he did not attend the hearing and his evidence was inconsistent in material respects. It follows that ground two is not made out.

Decision

15. The FTT decision to dismiss the appellant's appeal did not involve the making of a material error of law. That decision stands.
16. Accordingly, the appellant's appeal to the UT is dismissed.

Signed
M. Plimmer

Dated
27 March 2019

Melanie Plimmer
Judge of the Upper Tribunal