



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

Appeal Number: HU/02490/2020

**THE IMMIGRATION ACTS**

**Heard remotely via Skype for Business  
On 5 March 2021**

**Decision & Reasons  
Promulgated  
On 16 March 2021**

**Before**

**UPPER TRIBUNAL JUDGE LANE**

**Between**

**MD ARIFUZZAMAN  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr Karim

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

**DECISION AND REASONS**

1. The appellant, a citizen of Bangladesh born on 16 September 1985, appeals against a decision of the First-tier Tribunal (Judge L K Gibbs) promulgated on 22 September 2020. The First-tier Tribunal dismissed the appellant's appeal on human rights grounds against a decision of the Secretary of State dated 29 January 2020 refusing him leave to remain on the basis of long residence.
2. Two previous Tribunals (the most recent in October 2019) had concluded that the appellant had been the party to a marriage of convenience. Judge

Gibbs relied on *Devasseelan* [2002] UKIAT 00702\* and found [16] that she should not depart from the conclusions reached in the previous appeals. This finding led her to conclude [17] that the appellant had not completed 10 years' lawful residence as he claimed but that his lawful residence had ended on 15 July 2015, the date on which his leave to remain as a student had been curtailed.

3. Judge Gibb heard evidence from four witnesses who testified as to the genuineness of the appellant's marriage to an EEA citizen. Those witnesses had not given evidence before the previous Tribunals although their evidence related to events going back over a period of years. One witness claimed that he had attended the appellant's wedding and had lived for several months with the appellant and his spouse. The judge dealt with the evidence of the witnesses at [15]. She noted that 'no explanation is provided *by the appellant* or his witnesses as to why they not attend any of the previous appeal hearings, despite the fact that the genuine nature of the appellant's marriage has always been in issue.' [my emphasis]. The judge 'was not persuaded that the evidence of these witnesses carries sufficient weight to lead me to depart from the previous judges' findings.'
4. The appellant argues that the judge perpetrated a procedural error by failing to ask the witnesses (whose evidence had not been challenged in cross examination) why they had not provided written evidence before or attended the previous hearings.
5. I disagree with that submission. I have highlighted above the passage in the judge's decision where she records that the appellant did not provide any explanation for the fact that the witnesses had not given evidence before. At the outset of proceedings, the burden of proving that an individual is a party to a marriage of convenience is on the Secretary of State but, as Mr Bates, who appeared before the Upper Tribunal submitted, where there are undisturbed judicial findings that an appellant is a party to a such a marriage, it is for the appellant to prove that he is not, a submission which Mr Karim, who appeared for the appellant, did not challenge. It would have been obvious to the appellant in the instant appeal that he had to explain why witnesses, who could have assisted him at previous hearings because their testimony concerned events which had occurred before the previous proceedings, had not done so. It was for the appellant to prove his case and his failure to volunteer any explanation entitled Judge Gibbs to attach little weight to that evidence irrespective of whether either the witnesses or the appellant were questioned directly. It is significant that, even now, no explanation has been put forward.
6. Mr Karim also submitted that the judge erred by failing to make findings on the evidence of the witnesses. I disagree. The judge was not required to make detailed findings on the specific claims made by the witnesses. It was enough for the judge to say why she had reached the comprehensive

finding that nothing the witnesses had said was sufficient to lead her to depart from the findings of the previous Tribunals. I also disagree with Mr Karim's submission that the judge misapplied *Devasseelan*. He argued that the appellant was not introducing a new 'fact' which had not been brought to the attention of the previous judge (see *Devasseelan* at [4]) but rather new evidence of an 'old' fact i.e. that he was in a genuine marriage. That submission does nothing, in my opinion, to undermine the validity of the judge's approach to the new evidence.

7. The third ground challenges the judge's analysis of paragraph 276ADE (Private Life) of HC 395 (as amended). The appellant claims that he is estranged from his family as a consequence of his marriage. He argues that, whether or not the relationship with the EEA national is genuine, a marriage ceremony had taken place and the family 'may well be upset.' I find that, in the light of the very poor credibility of the appellant as found by three different Tribunals, the judge was justified in rejecting the claim that the appellant's family would be upset by his attempt to remain in the United Kingdom.
8. The final ground asserts that the judge did not give sufficient reasons for finding that the appellant enjoys family life with the adult cousin with whom he currently resides. However, the judge cites the appellant's age and personal financial independence as reasons why the existence of a relationship which extends beyond the normal emotional ties between adult family members. The reasons given are adequate. The argument that the appellant has not been given credit for acting as a Covid volunteer is without any merit in the light of section 117B (4) and (5) of the 2002 Act which the judge has applied correctly at [27].
9. For the reasons I have given, this appeal is dismissed.

**Notice of Decision**

The appeal is dismissed.

Signed

Date 9 March 2021

Upper Tribunal Judge Lane