



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-002330

First-tier Tribunal Nos: EA/50051/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 3 October 2023

Before

DEPUTY UPPER TRIBUNAL JUDGE GRIMES

Between

VALTER ELEZI
(NO ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: No appearance by or on behalf of the Appellant
For the Respondent: Mr N Wain, Senior Home Office Presenting Officer

Heard at Field House on 6th September 2023

DECISION AND REASONS

1. The Appellant, a national of Albania, appealed to the First-tier Tribunal against a decision of the Secretary of State dated 17 January 2023 refusing his application for pre-settled status under the EU Settlement Scheme in Appendix EU of the Immigration Rules. First-tier Tribunal Judge Turner dismissed his appeal having determined it on the papers. The Appellant now appeals with permission granted by First-tier Tribunal Judge Elliott on 16 May 2023.
2. There was no appearance by or on behalf of the Appellant at the hearing before me. In advance of the hearing the Tribunal received a letter from the Appellant indicating that he had been involved in an accident and was an in-patient in hospital. He confirmed that he had already submitted significant pieces of evidence. He requested that the appeal be heard for the purpose of final disposal and in the interests of justice. He attached a letter from Chelsea and Westminster Healthcare Accident and Emergency Department at Chelsea and Westminster Hospital dated 5 September 2023 stating that he had been an in-

patient since 4 September 2023 as a result of a car accident and that he was unable to travel. In the circumstances and in light of the Appellant's request to hear his appeal in his absence, I was satisfied that the Appellant was aware of the hearing and that he was content for the appeal to proceed in his absence. I heard submissions from Mr Wain and I reserved my decision.

Background

3. The background to this application is that the Appellant made an application for leave to remain in the UK under the EU Settlement Scheme on the basis of his retained right of residence based on his marriage to an EU national in January 2018. The couple divorced in June 2021. In a decision dated 17 January 2023 the Respondent refused the application on the basis that there were reasonable grounds to suspect that the marriage with the relevant EEA citizen is one of convenience entered into as a means to circumvent the requirements for lawful entry to or stay in the UK. The Respondent gave a number of reasons for that decision including that the Appellant and the EEA citizen were invited to attend an interview. Invitation letters were sent to the Appellant at his email address on 23 November 2022 and 6 December 2022 but the Appellant did not attend the interviews and did not give any good reason for his failure to do so. The Respondent further took into account that the Sponsor had provided the Home Office with evidence of two different listed spouses. The Respondent drew a factual inference that there are reasonable grounds to suspect that this was a marriage of convenience.
4. The Appellant put forward evidence in support of his appeal and the Respondent issued a Respondent's review on 28 February 2023 outlining that the Appellant did not meet the definition of a family member who has retained the right of residence in Annex 1 of Appendix EU because the divorce certificate lists the Appellant's address as Cyprus, therefore he was not resident in the UK at the date of termination of the marriage. Further, the Respondent considered that no evidence had been provided to show that the Appellant was in a genuine marriage taking into account that the Appellant's former spouse is the Sponsor for another application. The Respondent noted that the Appellant had not provided any information regarding why the marriage had ended and had not provided any details that he had custody of a child of a relevant EEA national. In those circumstances the Respondent submitted that the Appellant does not meet the definition of a family member who has retained the right of residence and fails to meet the eligibility requirements under the EUSS as set out in Rule EU11 of Appendix EU.

The First-tier Tribunal decision

5. The appeal before the First-tier Tribunal was a paper appeal as selected by the Appellant. The judge considered the documentary evidence. The judge accepted that the Appellant's divorce was conducted by lawyers in Cyprus in the Appellant's absence [23]. However, at paragraph 24 the judge outlined that he did not accept that the Appellant's marriage to his ex-wife was genuine. He considered that the issues raised in the reasons for refusal letter had not been addressed by the Appellant. The Appellant failed to attend for interviews despite two requests and without providing an explanation. The judge also took into account the lack of evidence regarding the relationship such as photographs, cards, communication and such from a three year marriage. The judge considered the bank statements provided [26] but considered that these show limited transactions which run to four pages in total and considered that the

transactions do not evidence that both account holders undertook transactions and found that there was not sufficient evidence of a genuine relationship, let alone cohabitation. The judge noted the only other evidence which was a utility bill for water and energy in joint names but considered that a name can be easily added to an account. The judge noted that the Appellant had not provided any detail about the relationship in his witness statement, nor had he explained why he was unable to provide any further evidence to show that the marriage is genuine [27]. Considering all of the evidence the judge concluded that the Appellant had not demonstrated that he was in a genuine relationship with his ex-wife.

The grounds

6. In his Grounds of Appeal the Appellant disputed that he had been invited for interviews in regard to the relationship. He stated that he submitted his online application form on 15 December 2022 and did his biometrics on 10 January 2023 receiving his certificate of application on 11 January 2023. He highlighted that the Respondent stated in the refusal notice that they invited the Appellant and the Sponsor for two interviews on 23 November 2022 and 6 December 2022 which was prior to the submission of the application. In these circumstances it is contended that the judge made a material error of fact.

Grant of permission

7. First-tier Tribunal Judge Elliott considered it arguable that the judge erred in making a material error of law in that the judge took into account that the Appellant had allegedly failed to attend two marriage interviews however it appeared that the interviews were prior to the date of the application.

Discussion and conclusions

8. At the hearing before me Mr Wain submitted that the Appellant had made two previous applications on the basis of his marriage. He made an application on 2 November 2022 which was refused on 13 December 2022 and he made an application on 15 June 2022 which was refused on 7 December 2022. The current application, the subject of this appeal, was made on 15 December 2022 and refused on 17 January 2023. He submitted that it is the Respondent's case that within those previous applications the Appellant was invited to the two interviews.
9. I have considered the evidence and this submission and timeline appears to be consistent with the papers before me. I note in particular that the invitations to the Appellant to attend interview were sent to the same address as set out in the application form. I further note that the application form submitted by the Appellant in his bundle is incomplete and does not therefore cover any previous applications made.
10. I am satisfied that the Appellant made previous applications and that the interviews which he failed to attend were in respect of those previous applications. I do not see why these could not be taken into account by the Secretary of State in making the decision in relation to this application and by the judge in his consideration of the issue before him.
11. In any event I do not consider that this is a material error. I take into account the other reasons put forward by the judge for the decision that the Appellant

had not demonstrated that he was in a genuine marriage. I note paragraphs 25, 26, 27 and 28. The judge gave adequate reasons for finding that the Appellant had not demonstrated that his marriage was not a marriage of convenience for the reasons set out therein even if the failure to attend interviews is removed from the reasoning. I therefore find that the judge has given adequate reasons for the decision to dismiss the Appellant's appeal.

12. I have considered the further ground in the Appellant's grounds which appears to state that the Respondent had not discharged the initial evidential burden to justify a reasonable suspicion that this was a marriage of convenience. In this context I note the reasons for refusal letter which states that the Sponsor provided the Home Office with evidence of two different spouses and the Appellant had failed to attend interview and that these gave reasonable grounds to suspect that the marriage is one of convenience. I note the judge's consideration of this evidence at paragraphs 11-16 and 24 of the decision. I consider that it is clear that the judge accepted that the evidence submitted by the Respondent and the reasons given are adequate to discharge the initial burden on the Appellant such as to shift the burden to the Appellant to demonstrate that it is not a marriage of convenience. As set out above, I find that the judge gave adequate reasons for finding that the Appellant failed to discharge the burden upon him.
13. Accordingly, I find that the Appellant has not demonstrated that there is a material error of law in the judge's decision.

Notice of Decision

For the foregoing reasons my decision is as follows:

- (a) **The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law and I do not set aside the decision but order that it shall stand.**

A G Grimes

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

25 September 2023