



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

OA/05154/2013

Appeal Number

THE IMMIGRATION ACTS

Heard at Sheldon court  
On 18<sup>th</sup> June 2014  
Prepared 18<sup>th</sup> June 2014

Determination Promulgated

On 27<sup>th</sup> June 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE PARKES

Between

USMAN BASHIRAHMAED VAID  
(ANONYMITY DIRECTION NOT MADE)

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

For the Appellant: Mr N Ahmed (Counsel, instructed by Bhavsar Patel, Solicitors)  
For the Respondent: Mr D Mills (Home Office Presenting Officer)

DETERMINATION AND REASONS

1. The Appellant applied to enter the UK as the spouse of an EEA national exercising treaty rights. The application was made on the 9<sup>th</sup> of January 2013. The ECO refused the application in a Refusal Notice of the 22<sup>nd</sup> of January 2013 which gave the reasons for the decision. The Appellant appealed the decision by Notice and Grounds of Appeal of the 7<sup>th</sup> of February 2013.
2. The appeal was heard by First-tier Tribunal Judge T R P Hollingworth at Nottingham Magistrates' Court on the 27<sup>th</sup> of November 2013. The appeal was dismissed in a determination promulgated on the 14<sup>th</sup> of December 2013. In the determination the Judge rejected much of the credibility of the evidence and found that it had not been shown that the Sponsor was exercising treaty rights.
3. The Appellant sought permission to appeal to the Upper Tribunal in grounds of the 7<sup>th</sup> of January 2014. The grounds assert that the Judge erred in making credibility findings in respect of the genuineness of the relationship when this was not an issue and that this infected the

findings made by the Judge in respect of the issue of whether the Sponsor was exercising treaty rights in the UK. It was stated that the Judge was wrong to have applied Tanveer Ahmed to the documentation that was relied on.

4. The grounds were considered by First-tier Tribunal Judge Page who granted permission to appeal on the 31<sup>st</sup> of March 2014. Judge Page found that it was arguable that the Judge's approach to the Sponsor's credibility regarding replies about the relationship were an error, this was not an issue the Appellant could have anticipated before the hearing. It was not clear why those answers undermined her credibility about her employment. Also in relation to the Sponsor's employment there was documentation and it was not clear what findings were made in paragraph 51 and that it was not clear why the HMRC evidence fell to be disregarded.
5. The determination of Judge Hollingsworth set out the background and the Sponsor's evidence. The Judge's findings begin at paragraph 15. In relation to what the Appellant complains are extraneous issues relating to his immigration history and the nature of the relationship, these findings are set out in paragraphs 18 to 28. The Judge referred to the Appellant's history of applications and his appeal in June 2007.
6. The findings in respect of the Sponsor's evidence are set out from paragraph 25, those relating to the relationship end at paragraph 28. They are followed by a discreet analysis of the evidence relating to her employment and the supporting documentation.
7. The Appellant would have more grounds for complaint if the issue of the relationship had been taken by the Judge in the determination without warning or without giving the Appellant's representative or witness to address the issue in answer to questions or submissions. At the hearing a Presenting Officer may take issues that appear to arise on the information available. This is supported by Kwok on Tong [1981] Imm AR 214.
8. While the nature of the relationship was not questioned in the Refusal Notice that did not preclude the Presenting Officer from raising it before the Tribunal. In being asked questions the Sponsor had the opportunity to provide information that was relevant and, as is often the case, answers provided led to other questions. It was the answers that the Sponsor gave that gave rise to the problem.
9. The suggestion that the Sponsor should have been warned carries no weight, the Sponsor was being asked when she met the Appellant, not a subject that would ordinarily be controversial or that would need preparation. In any event the Judge did not make a finding on the genuineness of the marriage but took the view that the evidence had an effect on the Sponsor's credibility.
10. I am not persuaded that there was an error in this regard or, if there was, that it could be regarded as material. Credibility is to be assessed overall and if a witness is not reliable on one issue that is bound to affect the assessment of their evidence in other areas. Obviously if there is material that supports the main thrust of a witnesses evidence then that may assuage any doubts or concerns that a Judge may have but equally if there are other concerns that may exacerbate the situation.

11. Reading the determination as it relates to the credibility of the evidence it falls into 2 distinct parts. The first from paragraph 18 to 28 deals with the Appellant's history and the marriage. That is followed by paragraphs 29 to 53 which concern the Sponsor's employment and contain an analysis of the documentation provided in support.
12. As I have indicated I am satisfied that the consideration of the issues in paragraphs 18 to 28 were properly considered by the Judge and are not an error. In any event if that is wrong the following paragraphs are distinct and contain an analysis of the documentation that can be considered separately.
13. The analysis of the documentation in paragraphs 29 to 53 can be read separately from the previous paragraphs and can be maintained without reference to the other findings. The Judge looked at the documents in turn and gave reasons for finding that they were not reliable or that the evidence was not accepted.
14. The Appellant was inconsistent about whether she had a contract and there was none available. Salary slips from May to July 2012 were missing, others were not accepted when taken with the absence of a contract of employment and issues relating to letters allegedly from the company.
15. At paragraph 33 the Judge summarised the position and found that the documents supplied were not reliable. For the reasons given in paragraphs 45 to 49 the Judge found that the information on the HMRC documents in paragraph 51 were not reliable. He observed that it might have supported the Appellant's case but the unreliability of the supporting documentation meant that he placed no weight on the information it contained, not that the document was not genuine.
16. At the hearing before the Upper Tribunal Mr Ahmed argued that the Respondent had already been granted a residence card. After some exchanges it became apparent that there was nothing about this on the ECO's file and it was not raised in evidence at any stage before Judge Hollingsworth.
17. Clearly it is not an error where potentially relevant information is not placed before the Judge for him to consider. In any event the case had to be considered on the facts as they stood at the date of the decision, the fact that the Appellant may have been exercising treaty rights at a time before the decision may have been capable of being relevant but would not be determinative of the appeal. However, it was not brought to the Judge's attention and so, legally, is not relevant in these proceedings.
18. It was also argued that the Sponsor has the right to reside in the UK under regulation 13 of the EEA Regulations and that the Appellant should have been entitled to join the Sponsor on that basis. Apart from the fact that it does not appear to be the case that such an application was made I have had regard to Regulation 19(2) which only requires that a family member be admitted to the UK if the EEA national has a right to reside in the UK.

19. Paragraph 13 only refers to the initial right of residence which the Sponsor had exercised some time ago and not on her return. A return to where a person has been residing cannot be the initial residence. This was an application to join an EEA national exercising treaty rights and for the reasons given the ECO and Judge were entitled to conclude that it had not been shown that the Sponsor was exercising treaty rights. It is not clear that this was argued before the First-tier Tribunal and if not it cannot be said to be an obvious point. In any event there is no error in the determination.

## CONCLUSIONS

The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.

I do not set aside the decision.

### Anonymity

The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005 and I make no order.

### Fee Award

In dismissing this appeal I make no fee award.

Signed:

Deputy Judge of the Upper Tribunal (IAC)

Dated: 26<sup>th</sup> June 2014