IAC-FH-AR-V1

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/19017/2014

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 23rd February 2015	**On 23rd February 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE MCCLURE

Between

MR GHULAM RAZA
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: No attendance
For the Respondent: Ms Everett Senior Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant, Mr Ghulam Raza, date of birth 5th May 1984, is a citizen of Pakistan. I have considered whether or not is it appropriate to make an anonymity direction. Taking all the circumstances into account I do not make such a direction.

2. There was no attendance by the Appellant. His representatives had by fax/e-mail written to the Tribunal on the 23rd February 2015 stating that they were without

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instructions. They were applying to be taken off the record and stated that they would not be attending. There was no explanation for the non-attendance of the Appellant.

3. The Notice of Hearing had gone out to the Appellant in accordance with the Rules. I decided in the circumstances it was just and proper to proceed with the hearing in the Appellant's absence.

4. The Appellant is appealing against the decision of First-tier Tribunal Judge Cockrill promulgated on 7th November 2014. By that determination Judge Cockrill dismissed the Appellant's appeal against the decision of the Respondent to refuse the Appellant a residence card as evidence of a right to reside as the spouse of an EEA national exercising treaty rights in the United Kingdom.

Factual Background

5. On 25th May 2012 the Appellant had applied for and was subsequently granted leave to remain as a Tier 4 (General) Student. Leave was granted on 10th August 2012. However, by 12th February 2013 that leave was revoked.

6. By application dated 10th March 2014 the Appellant applied for a residence card as the spouse of an EU national, the EU national being Miss Barbara Herkt. However, the Appellant was then encountered by enforcement officers on 24th March 2014 at Weybridge Registry Office seeking to enter into the marriage with Miss Herkt. It therefore appears that at the time of the application they were not in fact married.

7. The application for a residence card was then refused by decision dated the 21st March 2014. The Appellant appealed against that decision and the appeal was considered by Judge Cockrill on Monday 3rd November. On 3rd November nobody attended.

8. It appears that a letter had been sent to the Tribunal on the Friday before, the hearing being on the Monday, requesting that the oral hearing be converted to a paper hearing and that further time be given for submission of further documents to support the Appellant's case. Given that the application was within 24 working hours of the hearing it should have been obvious that there was no guarantee that the application would be granted and it was necessary for either the Appellant or his representatives to attend and make the application at the hearing itself. No one attended the hearing.

9. It has to be noted that the solicitors had in point of fact been instructed as of May 2014 because they had submitted a bundle of documents at that time. Yet they were requesting some six months later further time to be able to submit further documents. They had had ample time to put the case in order but had not done so.

10. There was no reason to suppose that the judge would grant an application to adjourn. The judge considered the matter and heard submissions from the Respondent, as he was obliged to do. It must be remembered that that are two

parties to these proceedings, and just as much as the Appellant is entitled to have a proper hearing, it is also right that the Respondent be entitled to a swift and expeditious consideration of such appeals. The Respondent clearly wanted the matter to be determined. The judge therefore determined to proceed with the hearing on the basis of the evidence thus far lodged.

11. According to the representations by the Appellant's representative, a bundle of documents had been faxed on 3rd November to the court at 10.59 a.m. It appears that that bundle of documents was never served on the Respondent. The evidence that they relied on was never provided to the Respondent and therefore the judge in receiving the documents subsequent to the hearing was dealing with evidence that had not been provided to the Respondent.

12. Even if one were to look at the evidence that had been subsequently submitted, there is a statement from the Appellant which indicates that Ms Herkt, with whom he had been in a relationship and whom he was allegedly marrying, no longer wished to be associated with him and he could no longer contact her. Therefore the relationship does not seem to have been subsisting at the time of the additional statement to the Tribunal.

13. That seems to be consistent with the account given by Ms Herkt when interviewed after Weybridge Registry Office in which she stated that she had only agreed to the marriage because she was being paid £2,500 in money and she did not really know the Appellant. She stated that she lived in Yorkshire with her boyfriend and not with the Appellant in Slough.

14. There was a verbal agreement that she would be paid and the lady therefore clearly was very troubled by the fact that the nature of her marriage had been discovered. The facts as admitted by her clearly established that this was not a genuine marriage.

15. If one examines the statement by the Appellant it does indicate that the relationship is subsisting. The marriage has not taken place. Whatever can be said, there is no marriage, there is therefore no relationship of the Appellant to an EEA national, even on the evidence as presented.

16. However, I am not dealing with the matter on that basis. I have to consider whether or not the judge was right not to adjourn the matter and not to direct that the matter to be dealt with by a paper hearing. Within the documentation the solicitors not only were requesting a paper hearing but requesting that new directions be given. There was no guarantee that the judge would agree to the matter being converted to a paper hearing. The matter had been listed for an oral hearing and the judge was perfectly entitled to proceed with the oral hearing in all the circumstances. It was necessary for the Appellant to attend or his representatives to make a proper application and give a justifiable reason why the oral hearing should not go ahead. There was no need for further directions. The Appellant and his representative had had ample opportunity to put all the documents they needed to support the case to

show that this was a genuine marriage and not a marriage of convenience. No such documents have been put forward.

17. Indeed, the new documentation including the statement supports the view that the marriage was indeed merely a marriage of convenience.

18. Further to that, there was absolutely no evidence that Ms Barbara Herkt, was in fact working. There was no evidence that she was exercising treaty rights. The judge comments on that in paragraph 31 of the determination.

19. The judge does indicate in paragraph 20 that he has considered all the documents submitted and in paragraph 31 that he has considered the documents on behalf of the Appellant submitted by the solicitors. There was nothing even in the new bundle which would indicate that the findings by the judge were wrong in law.

20. If one looks therefore at the situation the Appellant and the Appellant's representative could not presume that an adjournment would be granted. It was for them to attend in order to make a proper application. They did not. The judge was entitled to proceed with the hearing and to determine it on the basis of the evidence that was before him. Even if the additional evidence should have been considered and was not, which I am satisfied that there is nothing within the additional evidence which brings into question the findings of fact made by the judge.

21. The judge was perfectly entitled to conclude that it had been proved that this was a marriage of convenience and that there was no evidence in any event that the sponsoring EEA national was in point of fact a qualified person. In those circumstances the judge was entitled to come to the conclusion that he did and to dismiss this appeal. For the reasons set out I find that the judge made no material error of law and I uphold the decision made on all grounds.

Notice of Decision

The appeal is dismissed

No anonymity direction is made.

No fee award is made

Signed Date **23rd February 2015**

Deputy Upper Tribunal Judge McClure