IAC-AH-PC-V1

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/25973/2014

THE IMMIGRATION ACTS

Heard at Field House	**Determination Promulgated**
On 8th April 2015	**On 17th April 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

MR MUHAMMAD SALMAN ZAMAN
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms N. Mnamani (Counsel)
For the Respondent: Mr S. Kandola (HOPO)

DECISION AND REASONS

1. This is an appeal against the determination of First-tier Tribunal Judge I. Howard, promulgated on 28th November 2014, following a hearing at Hatton Cross on 7th October 2014. In the determination, the judge dismissed the appeal of Muhammad Salman Zaman. The appellant subsequently applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

The Appellant

2. The Appellant is a male, a citizen of Pakistan, who was born on 4th April 1988. He appeals against the decision of the Respondent dated 10th June 2014, refusing to issue him with an EEA residence card under Regulations 2 and 17, of the Immigration (European Economic Area) Regulations 2006, such an EEA national spouse being one, Kornelija Mikalkeviciute.

The Appellant's Claim

3. The Appellant's claim is that he married his sponsoring wife, Ms Kornelija Mikalkeviciute, a Lithuanian national, on 22nd May 2014 in Liverpool. He had entered the UK for study, but confirmed that he last studied in October 2012, and then he met his wife in a night club called Tiger Tiger, where they first made contact, following which he took his wife to Starbucks for a salad sandwich and a Coke, and the relationship developed.

The Judge's Findings

4. The judge applied the well-established Tribunal decision of **Papajorgji (EEA spouse – marriage of convenience) Greece [2012] UKUT 00038** to this case. What that establishes that there is no burden at the outset of an application on a claimant to demonstrate that the marriage to an EEA national is not one of convenience. However, once a reasonable suspicion is raised on the basis of the evidence that the marriage is entered into for the predominant purpose of securing residence in the UK, then there is an evidential burden on the claimant to address this very question.

5. In this case, the judge referred to the fact that the Appellant was asked a total of 446 questions and his wife was asked a total of 422 questions. The Respondent was concerned with answers to about fifteen questions only (see paragraph 17).

6. However, at the hearing, before the judge, the Presenting Officer stated that there were 50 questions asked of each of them separately, which gave cause for concern, on the grounds of being inconsistent (paragraph 17).

7. The judge went on to say that he had looked at the questions and that,

> "The questions range across a number of topics including their siblings, his family in Pakistan, their first meeting, their contact following that first meeting, whether she is a vegetarian or vegan, their talk of marriage, the proposal, the time of the wedding, the witnesses to the wedding, the microwave in their kitchen, showering habits, where food is kept, cooking, cigarettes, attending the gymnasium and events on and around 19th May 2014 when immigration officials attended their shared home".

8. The judge went on to say, following the recital above, that, "each of these topics about which they were questioned contained answers that are

inconsistent" and that, "I have looked carefully at the context of the answers and considered the explanations for the differences advanced in the evidence" (paragraph 18). Given this, the judge then went on to say that, "it is correct to say that neither the Appellant nor her husband was able to give cogent reasons for the differences in their answers" (paragraph 19).

9. What was most significant, according to the judge was that, at the time of the visit by the Immigration Officers, "there was no suggestion of the Appellant's living at the address at the time of the visit [and this] is telling. The explanation is that they had fought and he had, temporarily, moved out. I did not find the account of this 'coincidence' at all compelling" (at paragraph 20).

10. Accordingly, the judge decided that there was a reasonable suspicion and that the inconsistencies are such as to "satisfy the evidential burden on the Respondent. Thus the evidential burden shifts to the Appellant and her witness" (paragraph 21).

11. In this regard, the judge observed that,

> "Their evidence was weak. They are very different. The Appellant is a serious and relatively humourless individual. His wife on the other hand is gregarious and a serious party-goer. The description she gives of him on the night they met is of a man ill-at-ease in the environment of a public house or nightclub …" (paragraph 22).

The judge also then went on to say that he heard evidence from two of Ms Mikalkeviciute's friends and that,

> "They are both similar in demeanour to Ms Mikalkeviciute. Considering the presentation of each of the four witnesses, I am satisfied that the Appellant is the acquaintance of her two friends and it is in those circumstances her 'marriage' has been contracted" (paragraph 23).

12. The appeal was dismissed.

Grounds of Application

13. The grounds of application state that the judge imposed too high a burden of proof upon the Appellants and that the decision was against the weight of the evidence.

14. On 10th February 2015, permission to appeal was granted on the basis that it was arguable that there has been some unfairness in this case, which could amount to an error of law.

15. On 16th February 2015 a Rule 24 response was entered, where it was maintained that the judge did not find that the Appellant and the Sponsor shared a house, but not a room.

16. Rather, what the judge was doing was summarising the position adopted by the Sponsor and Appellant in respect of their living arrangements and how these arrangements impacted on their interview.

Submissions

17. At the hearing before me on 8th April 2015, Ms Mnamani, began by drawing my attention to the Appellant's bundle and to the interviews which were there set out. In particular, my attention was drawn to pages 94 to 162. It was further submitted that the Respondent's bundle contains the discrepancies that are relied upon by the Respondent. The findings by the judge were made from paragraph 14 onwards. She submitted that over 400 questions were asked to both of the parties separately, and there were bound to have been some inconsistencies, but the judge had to explain what these inconsistencies were. This is particularly important because, if one looks at the discrepancies that allegedly are said to have been made, in the Respondent's own bundle, they could easily be explained away. The judge had clearly therefore applied a much higher standard of proof. This was clear from what the judge said at paragraph 20, when he had evidence before him that the Appellant had moved out of the house after a disagreement with the Sponsor, and that was the reason why he was not there. At one point the judge had observed that the couple shared a house, but not a room, but subsequently, the judge then contradicted himself. It was, therefore, important for the judge to set out exactly what it was that was so discrepant as to damage the credibility of the Appellant and the Sponsor.

18. For his part, Mr Kandola submitted that the challenge here was to factual findings and it was therefore a disagreement with the determination. The Upper Tribunal should be slow to interfere in the findings of a fact-finding Tribunal below. The fact was that there were discrepancies here and these were set out at annex 1 of the Respondent's bundle.

19. In reply, Ms Mnamani stated that there was "unfairness" to the Appellant, in the way envisaged by the judge granting permission to appeal. The unfairness arose from the fact that there is an allegation of discrepancies without the discrepancies actually having been set out in the determination. If one looks carefully, there are actually no discrepancies as such.

No Error of Law

20. I am satisfied that the making of the decision by the judge does not involve the making of an error on a point of law (see Section 12(1) of TCEA 2007) such that I should set aside the decision. My reasons are as follows. This is a case where the judge has applied the principle in **Papajorgji** carefully. The central complaint made by Ms Mnamani against the determination is that the judge did not set out in the body of the determination the precise contradictions in the evidence. Whereas this is true, it cannot be said that the judge was oblivious to the discrepancies in

question. This is because he quite clearly stated that, "the questions range across a number of topics including their siblings, his family in Pakistan, their first meeting …" (and so forth) (at paragraph 18). He ends the analysis of these areas of questioning with the statement that, "each of these topics about which there were questions contains answers that are inconsistent" (paragraph 18).

21. Second, if one looks at the questions themselves, it is clear from Appendix 1 of the Respondent's bundle, and the refusal letter itself, that some of these discrepancies are indeed such as to have formed the basis of the judge's determination in exactly the way that it did. For example the Appellant said that his wife proposed to him in the morning of June or July 2013. His spouse, however, said that she proposed to him in the bedroom in the evening of May 2013. Similarly, the Appellant still had not informed his family in Pakistan about the fact that he was now married to a Lithuanian and maintained that this was because "their reaction would not be good".

22. Furthermore, the Appellant said that the house where he lived was red brick. His spouse said that the house was painted white. But more importantly, when the Immigration Officers visited on 19th May 2014 the Appellant said that he was not at home because he was at work. However, his wife had said that he had not lived there for the last week. Only after the Appellant had been informed about what his wife said, did he accept that he indeed had not lived there for a week. The reason he gave was that they had quarrelled and he had left.

23. Clearly, therefore, the judge was correct in stating that there were discrepancies in the answers given which simply did not show that the parties were living in a genuine and stable relationship such as to comply with the requirements of the EEA Regulations. Indeed, the judge held that "neither the Appellant nor her husband was able to give cogent reasons for the differences in their answers" (paragraph 19).

24. Accordingly, notwithstanding the valiant efforts of Ms Mnamani to persuade me otherwise, I am not satisfied that there is an error of law in the determination by the judge below.

Notice of Decision

There is no material error of law in the original judge's decision. The determination shall stand.

No anonymity order is made.

Signed Date

Deputy Upper Tribunal Judge Juss 15th April 2015