



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

Appeal Number: IA/41335/2014

THE IMMIGRATION ACTS

Heard at Manchester

On 5th May 2015

**Determination
Promulgated**

On 22nd May 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE BAIRD

Between

**MR WAHID OTMAN M MIFTAH
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Hussain - Solicitor

For the Respondent: Mr G Harrison - Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal by Wahid Otman M Miftah, a citizen of Libya born 21st September 1985. He appeals against the determination of First-tier Tribunal Judge Holt issued on January 2015 dismissing his appeal against

the decision of the Respondent made on 2nd October 2014 to refuse to grant a residence card as a spouse of an EEA citizen. The Secretary of State refused the application because she was not satisfied that the Sponsor was exercising treaty rights or that the parties were in a genuine and subsisting relationship, the marriage being one of convenience. Permission to appeal was granted by First-tier Tribunal Judge Baker on 11th March 2015. He said:

- “3. It is arguable that the Judge’s treatment of the content of the interview record and the witness statement of the Appellant, particularly paragraph 4 which set out the Appellant’s responses to the reasons for refusal based on their respective answers given at their respective interviews about how they met and their knowledge of each other (i) – (xvii) erred. It is arguable that there is a material error of law in not addressing the specific points made in the Appellant’s witness statement seeking to rebut the challenges to their relationship based on the alleged lack of knowledge displayed in their respective interviews. Namely that in not addressing the specific explanations given by the Appellant in respect of each point taken against them the Judge materially erred as set out in paragraphs 5 to 10 of the grounds.
 4. It is also arguable that the Judge’s assessment as to the reasons why the Appellant and representative had told the Court Interpreter that interpretation in Arabic was not necessary and he proceeded to speak in English throughout the hearing was a procedural error arguably amounting, as submitted, to a procedural impropriety amounting to a material error of law.”
2. In the grounds seeking permission there is a lengthy submission that the Judge failed to consider the response made by the Appellant to the list of inconsistencies relied on by the Respondent. These answers are indeed set out at length in the grounds. It is submitted that there was sufficient information in the interview to demonstrate that the relationship was genuine and detail is given. This was highly material evidence. The Judge did refer to the interview but simply set out the objections that had been contained within the refusal letter and did not consider the detailed explanations that the Appellant provided in his witness statement.
 3. With regard to the issue of the language spoken and the interpreter, it is submitted that only a Romanian interpreter was requested. It was the Appellant’s intention to give evidence in English and the Judge materially erred in failing to consider this.
 4. The final submission is that the Judge materially erred in considering the issue of the wife’s employment. The evidence of the Appellant was that he goes to pick her up from work and she said that she is looking for full-time work because she earns so little. The Judge commented at

paragraph 16 that the payslips show a very modest income yet she did not consider the evidence that was given orally in court in this regard.

5. I would say at this point that it was further stated that at paragraph 13 Judge Holt said that she did not find credible the Appellant's explanation when questioned about difficulties of communication between him and his wife that when they struggled to communicate they communicated in Turkish. It was submitted that she erred in dismissing the claimed relationship on this point only, without considering other evidence, particularly the interview record that the Respondent had served on the morning of the hearing.
6. In response to the grant of permission the Respondent simply said that the Judge directed herself appropriately and the findings were open to her on the facts.
7. Firstly with regard to the language, what Judge Holt says at paragraph 13 is that she asked questions of the Appellant to try to ascertain how they could communicate in Turkish given that his spouse was Romanian and he was Libyan. The explanation given was that the Sponsor's father was Turkish and therefore she had learned some Turkish. The Appellant then said that Turkish and Arabic are very similar languages. The Judge expressed her surprise at that assertion and noted that when the issue was explored yet further what became apparent was that the Appellant said that Turkish and Arabic had certain words in common which were essentially naming words i.e. nouns, and that the parties were able sometimes to identify certain things because the noun in Turkish was the same or very similar to that in Arabic. The Judge made what I consider to be a reasonable finding that having the ability to identify certain nouns in common and being able to speak Turkish together as a shared language are two wholly different things. She found that the Appellant had grossly exaggerated their ability to communicate in this way.
8. The Judge did not specifically mention the responses made by the Appellant to the list of inconsistencies relied on by the Respondent. She did however say that she had considered all the evidence that was in front of her and the response of the Appellant was in the Appellant's bundle as part of a statement.
9. The submission of Mr Hussain was that there was clear evidence that the marriage is genuine and that the couple are very happy together. His submission was that if the Judge had properly considered the responses to the alleged inconsistencies in the evidence and to their claimed lack of knowledge of each other the appeal would have been allowed.
10. The difficulty I have with the submissions of the Appellant in this case is that Judge Holt found that there was no satisfactory evidence to support the contention that the Sponsor is exercising treaty rights in the UK. She had a few wage slips but she was not satisfied as to their authenticity because they were not supported by any evidence from any other source.

There were no tax or national insurance documents. As was confirmed to me at the hearing there was no letter from the employer. Further Judge Holt notes at paragraph 17 when commenting on the fact that there was a glaring discrepancy in the evidence about how she got the job (she had said that her husband had organised and obtained it for her and her husband in evidence had emphatically denied that) the Appellant said that he had been confused over this. He said he thought the Presenting Officer had been asking him about his own employment with Miami Pizza. Judge Holt noted that this issue was put to the Sponsor four times and she was quite satisfied that he understood the question and gave the answer that his wife had found the job herself. She went on to say that his explanation made no sense whatsoever because he is not supposed to be working so it is incomprehensible how he thought the question could possibly relate to him. Again reasonably, she took the view that his answer might suggest that he had been working which would have the effect of further undermining his credibility and reliability.

11. I also consider that some of the inconsistencies relied upon are serious ones. There was an inconsistency as to where the couple met. The Appellant had said that they met at a social event at a friend's house in 2012. The Sponsor said they met in a coffee shop in London Road in Liverpool. The Appellant said that they met at Costa Coffee every morning and his spouse that they would meet every two or three days. I think these are serious inconsistencies. I accept and indeed the Judge took into account that they knew certain things about each other but that does not mean that the discrepancies do not exist or that they are not material.
12. Another serious and frankly inexplicable inconsistency is that the Appellant said that the Sponsor had been employed by Miami Pizza for four years and the Sponsor said that she had only been there for eight months. According to the interview the couple met in 2012 and married on 15th December 2013. The interview took place on 2nd September 2014. The couple were married by then. I cannot understand how he could have thought that she had been working with Miami Pizza for four years. She was only there for eight months which would mean that she did not start her job until after the wedding and the couple had been together for at least six months prior to the wedding. His explanation in his statement was that he had genuinely assumed that she had been working there for four years but this discrepancy is frankly inexplicable if they were together.
13. I have considered the submissions made by Mr Hussain, taking account particularly of the fact that it is clear from the Appellant's bank statement that he pays the landlord and the bills but there are cash sums being paid into his account, the source of which are unknown. Judge Holt said she took account of all the evidence that was before her and I see no reason to doubt this.
14. It may well be an arguable error not to have mentioned specifically the Appellant's responses to the inconsistencies relied on by the Respondent

but I do not accept that it is and having considered the findings made and the reasons given it is certainly not material. The appeal could not have succeeded in any event because on the evidence that was before the Tribunal about the Sponsor's job the Judge was entitled to make the findings she did and the appeal could not have succeeded in the absence of satisfactory evidence that the Sponsor was, at the date of the hearing, exercising treaty rights in the UK.

Notice of Decision

I therefore find that the decision of the First-tier Tribunal does not contain a material error of law and that decision shall stand.

No anonymity direction is made.

Signed

Date: 18th May 2015

N A Baird
Deputy Judge of the Upper Tribunal