



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

Appeal Number: IA/42685/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 15 December 2015**

**Decision and Reasons
Promulgated
On 28 January 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE O'RYAN

Between

**ABDUL GHAFFAR
(ANONYMITY ORDER NOT MADE)**

Appellant

and

RESPONDENT FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr s Tariq, West London Solicitors

For the Respondent: Mr S Walker, Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal brought by the Appellant against the decision of First-tier Judge Woodcraft dated 3 July 2015. The Appellant had appealed against the decision of the Respondent dated 14 October 2014 refusing to issue him with a residence card, under Regulation 17(1) of The Immigration (European Economic Area) Regulations 2006 ('the EEA Regs'). The Appellant had sought such a residence card on the basis of his marriage to Miss Slater, his wife, who is an Irish national.

2. The application for a residence card was refused but the Respondent agreed to reconsider that application, resulting in an interview with the Respondent on 9 September 2014 at which the Appellant and Miss Slater were both interviewed separately.
3. In the decision letter of 14 October 2014 the Respondent held that the marriage between the Appellant and Miss Slater was one of convenience. The letter contains a table containing 165 questions in typed form, indicating the question asked and the response given by both the sponsor and the Appellant.
4. The Respondent asserted, having highlighted a number of the answers set out in that table, that on the basis of discrepancies disclosed in those answers the Appellant's application was to be refused on the basis that his marriage was one of convenience.
5. A notice of appeal was filed against that decision, that notice of appeal being completed by West London Solicitors on 23 October 2014. That firm of solicitors continues to act for the Appellant up until the present time.
6. The appeal was first listed for hearing before a Judge of the First-tier Tribunal on 14 May 2015. On that occasion Mr Tariq who appears before me today appeared before the judge. I quote from paragraph 10 of the later determination of 3 July of Judge Woodcraft as to what happened on that occasion.

"10. On 5 February 2015 the Tribunal sent notice out to the Appellant and his solicitors that the appeal would be heard on Thursday 14 May 2015. On that date the matter was adjourned because of a concern as to whether the Respondent had supplied a complete transcript of the interviews with the Appellant and sponsor (in fact it appeared that the Respondent had done that with the refusal letter). The Tribunal was also informed that the Sponsor had left the United Kingdom on 7 May 2015, it was said because there was a family crisis as the sponsor's mother was ill. Evidence to confirm would be provided at a later stage should it be required. It was anticipated that the sponsor would return to the United Kingdom within ten days. The judge adjourned the hearing with directions that the Respondent was to file and serve the interview notes and comments plus the full transcript of the interviews with the Appellant and his spouse ('if one exists') by 4 June 2015. There was no Appellant's bundle and no statement from the Appellant or sponsor. The judge further directed that the Appellant was to file and serve his bundle no later than seven days before the next hearing."

7. I have seen the directions, sent out on 28 May, to that effect. The Respondent in fact provided the Appellant with a copy of the interview comments on 15 May; I have seen a fax from Feltham Presenting Officers Unit to West London Solicitors of that date providing a two page document entitled "Interview summary sheet". The direction had also required the Respondent provide to the Appellant a full transcript of the marriage

interview. On the 4 June 2015 a further fax was provided to those acting for the Appellant, with a transcript.

8. I pause to note that when considering the original Respondent's bundle in this matter there are a number of annexes marked A-L in the bundle. That bundle was prepared on 17 December 2014 and which Mr Tariq confirms to me today was received by his firm in December 2014. At Annex G of that bundle there appears an interview record sheet. The interview record sheet which was faxed to West London Solicitors on 4 June 2015 is the same record sheet which appears at Annex G of the Respondent's bundle which had been in the possession of West London Solicitors since December 2014. I also note that the decision letter itself dated 14 October 2014 sets out the same 165 questions in their entirety compared with the interview record sheet at Annex G of the Respondent's bundle which again West London Solicitors had had in their possession since December 2014.
9. The matter was relisted for hearing before Judge Woodcraft at Hatton Cross Hearing Centre on 19 June 2015. The judge records as follows as regards the procedure before him on that occasion.

“11. Subsequently on 15 June 2015 the Tribunal received the Appellant's bundle which I have summarised above. As a result of the adjournment the matter came before me on 19 June 2015 (just over five weeks later) when there was no representation on the part of the Respondent. The Appellant's representative produced statements of the Appellant and two individuals, Mrs McGary and Mrs Ruth and a statement of the sponsor dated 16 June 2015 declared before a solicitor at a firm called Trayers & Company. These were not in the Appellant's bundle.

12. Application was made by the Appellant's solicitor for an adjournment of the hearing on the grounds that the sponsor had still not returned from Ireland, the very brief statement from the sponsor said that the sponsor's mother was terminally ill and she was unfortunately unable to attend the Tribunal. There was no medical evidence supplied in support of this (despite the submission on the earlier occasion that evidence in confirmation of the sponsor's absence would be provided). The Appellant's solicitor was unable to help me with why the statement of the sponsor had not been taken earlier than 16 June 2015 and why it did not deal with the sponsor's comments on the claimed discrepancies between the answers of the Appellant and sponsor. This was despite the fact that all 165 questions had been supplied with the refusal letter which had been in the Respondent's bundle which had been in December 2014.”

10. Judge Woodcraft considered his position and decided as follows:

“13. I considered the application for an adjournment in the light of the Tribunal's jurisprudence that the test of whether to adjourn or not is one of fairness. This was not the first application for an adjournment of this case on the basis of the Appellant's absence. It had been said before that she would be absent for seven to ten days and that was

over five weeks ago. At the very latest an explanation should have been proffered as to why the sponsor's presence was still required in Ireland over a month after she had returned there and some information should have been proffered as to what the mother's condition was. When I queried this with the Appellant's solicitor he replied that he did not know. In the absence of such evidence I did not consider that it was fair and reasonable to adjourn the case any further and indicated that the matter would proceed which it did."

11. What the judge then did was to proceed to hear evidence from the Appellant personally, noting that the Appellant's witness statement dated 18 June 2015 was one page only and did not address the claimed discrepancies within the interview of 9 September 2014. The judge came to the conclusion that there were significant discrepancies between the answers of the Appellant and the sponsor and that the sponsor had not been present in order to assist the Appellant in responding to the concerns of the Respondent. The judge held that there was no adequate reason for the sponsor to be absent from the hearing and consequently upheld the decision of the Respondent that the marriage was one of convenience and held that the Appellant was not entitled to be issued with a residence card.
12. The decision of the judge has been appealed by West London Solicitors in grounds of appeal dated 16 July 2015. In those grounds the principal complaint is that the judge proceeded unfairly in failing to adjourn the appeal on 19 June 2015. The grounds assert that the preparation of the appeal had been inhibited by the late disclosure by the Respondent of the interview comments on 15 May 2015 and by the interview record sheet on 4 June 2015. The grounds also assert that there had been an adequate reason advanced by the sponsor for her non-attendance at the hearing.
13. I find that, notwithstanding the decision of the judge on 15 May 2015 to adjourn the hearing, the Appellant's representatives had been in a position to commence preparation of this appeal since December 2014. They had in their possession at that time a copy at Annexe G of the Respondent's bundle of the 165 question interview, the entirety of which was also transposed into the decision letter itself.
14. It has been argued before the Tribunal today that certain questions in that interview transcript gave rise to the suggestion that there may have been another separate interview transcript which the Appellant's representative would need in order to adequately prepare for the hearing. Examples of such questions were said to include question 8, which asked "Do you have any family living in Ireland or any other countries?" The answer recorded for the spouse is "In Ireland mother, father, two brothers and four sisters." The answer recorded for the Appellant is "her father, mother, 2 brothers and 4 sisters."
15. Another example of a question said to suggest that there may be another transcript not yet disclosed was question 9, which asked "What do your parents do for a living?" The answer recorded for the sponsor was "Ma is a

housewife and da works for the council. He cleans the houses and stuff like that." The answer recorded for the Appellant was "Her father is like works for council - I have never seen him but she told me that he works for the council. Not sure about her mother."

16. Question 14 was also brought to my attention which asked "Who paid for you to come to England?" The answer recorded for the sponsor was "Myself. I was on social welfare over there." The answer recorded for the Appellant was "Her parents or something like that. We never discuss."
17. On behalf of the Appellant Mr Tariq suggests that if the very same question had been posed to each individual then the Appellant would not have replied to those questions giving details of his wife's parents or details as to the reason why his wife had come to England. Rather if the identical question had been posed to both of them then he would have spoken of his own parents and of the reasons why he had come to England. That, it was argued, suggested that there may be other questions put, but not yet disclosed.
18. I reject that proposition on the basis that it is manifestly clear from questions 8, 9 and 14 that it must have been the case that the question was altered at the relevant points and that the Appellant was asked about his wife's parents and his wife's reasons for coming to England. There is no justification that I can see for anyone reasonably suspecting that a separate transcript was likely to exist.
19. I am conscious of the fact that the judge did adjourn the matter on 15 May and gave directions that a full transcript be provided but I am also conscious of the fact that the way that that direction was phrased was as follows:

"Directions

 1. The Respondent to file and serve the interview notes and comments plus the full transcript of the interview with the Appellant and his spouse (if one exists) by 4 June 2015.
 2. The Appellant to file and serve his bundle by no later than 7 days before the next hearing."
20. There was of course the other reason recorded by the judge on 15 May before the adjournment which was the absence from the United Kingdom of the Appellant's wife. It seems to me that the necessity of obtaining a full transcript of the interview (if one existed) was not the primary reason for the adjournment of the appeal on 15 May 2015. Rather the adjournment took place because of the desire to obtain any interview comments and to facilitate the attendance at court of the Appellant's wife.
21. I conclude therefore that the Appellant's representatives could and should have commenced their preparation of this appeal long ago. The Appellant's suggestion that he was not in a position to commence his

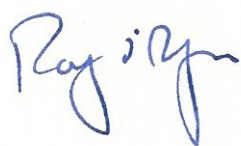
preparation for the appeal prior to receiving the interview comments on 15 May 2015 is totally unpersuasive.

22. I therefore agree with Judge Woodcraft in his observations that there seemed to be little reason for the absence of detailed witness statements from either the Appellant or his wife, prepared long ago and in good time for the hearing of 19 June 2015, irrespective of the fact that the Appellant's wife had travelled to Ireland to be with her mother shortly before the hearing of 15 May 2015.
23. The state of the evidence contained in the witness statements before Judge Woodcraft was still lacking, particularly from the Appellant. It seems to me that there was no adequate reason offered as to why the Appellant himself, who remained present in the United Kingdom, could not have given instructions to those representing him, and that a detailed witness statement from the Appellant addressing the concerns of the Respondent could not have been prepared in good time before the hearing of 19 June 2015.
24. I find that the decision of the judge to proceed with the hearing on 19 June 2015 was not procedurally unfair and does not disclose any material error of law. There is no challenge, aside from the procedural challenge, as to the reasoning of the judge and his conclusion that the marriage between the Appellant and the sponsor was one of convenience.

Notice of Decision

25. I therefore find that the making of the decision of the First-tier Tribunal dated 3 July 2015 did not include the making of any material error of law. I uphold the decision of the First-tier Tribunal and I dismiss the Appellant's appeal.

Signed:



Deputy Upper Tribunal Judge O'Ryan

Dated: 27.1.16