



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

Appeal Number: EA/04031/2015

THE IMMIGRATION ACTS

Heard at Manchester

**Decision and Reasons
Promulgated**

On 8 November 2017

On 9 November 2017

Before

Deputy Upper Tribunal Judge Pickup

Between

Naveed Riaz

[No anonymity direction made]

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:

For the appellant: Not represented

For the respondent: Mr J Harrison, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is the appellant's appeal against the decision of First-tier Tribunal Judge Shergill promulgated 4.1.17, dismissing his appeal against the decision of the Secretary of State, dated 11.12.15, to refuse his application made on 17.6.15 for an EEA Residence Card. The Judge heard the appeal on 14.12.16.
2. First-tier Tribunal Judge Simpson granted permission to appeal on 4.9.17.
3. Thus the matter came before me on 8.11.17 as an appeal in the Upper Tribunal.

4. There was no attendance by or on behalf of the appellant. The case file indicates that he is no longer legally represented. I was satisfied that notice of the hearing had been sent out by post well in advance of today's date to the same address given by him in the application for permission to appeal and as recorded on the case file itself. There was no explanation for his non-attendance. In the circumstances, I considered it in the public interest and consistent with the overriding objective to deal with cases fairly and justly to proceed in the appellant's absence. I note that he did not attend the First-tier Tribunal appeal hearing either.

Error of Law

5. In the first instance I have to determine whether or not there was an error of law in the making of the decision of the First-tier Tribunal such that the decision of Judge Shergill should be set aside.
6. The marriage between the appellant and Timea Keselova, a Slovakian national, took place on 3.2.14. The Secretary of State refused the application for a residence card on the basis that the marriage was one of convenience. A previous application made on the same basis had also been refused on grounds that the relationship was a marriage of convenience and the subsequent appeal dismissed (IA/28218/2014).
7. It is asserted by the Secretary of State that when the appellant and his Slovakian sponsor attended a marriage interview on 13.6.14, it became apparent that the language barrier between them was too great to be able to communicate sufficiently to sustain a genuine marriage. Further, in the marriage questionnaire, the appellant stated that his spouse spoke Bulgarian, when in fact she is Slovakian. At the marriage interview she asked for a Hungarian interpreter. Given that they claim to have been living together since 11.12.13, the Secretary of State considered it highly unlikely that a person in a genuine relationship would not know the language his sponsor spoke.
8. In the circumstances, the Secretary of State was not satisfied that this was a genuine and subsisting marriage, concluding that it is was one of convenience and thus not protected by regulation 2 of the Immigration (EEA) Regulations 2006.
9. In granting permission to appeal, Judge Simpson referenced the recent decision of the Supreme Court in Sadovska & Anon v Secretary of State [2017] UKSC 54, which confirmed that it is for the Secretary of State to demonstrate that the marriage is one of convenience.
10. Judge Simpson went on to consider it arguable that the decision of the First-tier Tribunal was absent the requisite robust assessment of the respondent's evidence, which did not include the marriage questionnaire referred to in the RFR, and relied on a marriage interview which did not proceed, because the respondent's representative "pre-emptively determined following carrying out a 'language test' that neither of the parties could sufficiently understand each other."

11. Judge Simpson concluded it was arguable that the decision, “disclosed an all-round inadequacy of robust reasoning concerning the respondent’s evidence,” and “an inadequate application of the requisite burden and standard of proof.”
12. I note that the grounds of appeal to the First-tier Tribunal make generalised assertions to the effect that the marriage is genuine and do not address the specific reasons given for refusal of the application. The appellant did not attend and was not represented before the First-tier Tribunal, even though it was listed for an oral hearing. Neither did he submit any evidence or other documentation. The First-tier Tribunal Judge had only the generalised grounds of appeal and those documents in the respondent’s bundle on which to make the decision on the appeal.
13. In seeking permission to appeal to the Upper Tribunal, the grounds merely assert that the decision of the First-tier Tribunal was against the weight of evidence and re-assert that the marriage is not one of convenience. It is also asserted that the First-tier Tribunal “applied very high standard of evidence.” No other ground of appeal was raised.
14. The only evidence actually before the First-tier Tribunal was that submitted by the respondent. The appellant and his sponsor did not attend the hearing to give evidence or to counter in person the assertion that theirs was a marriage of convenience.
15. There is no indication in the decision of the First-tier Tribunal that there was any error of law as to the standard or burden of proof. The judge recognised that the legal burden lay on the Secretary of State and not the appellant, contrary to the approach of the First-tier Tribunal that led to the Supreme Court decision in Sadovska & Anon v Secretary of State [2017] UKSC 54. At [16] the judge was satisfied that Secretary of State had adduced sufficient evidence to discharge the evidential burden raising suspicion that the marriage was one of convenience. The judge relied on the previous adverse Tribunal decision, applying Devaseelan, and accepted the assertion that at the marriage interview the appellant was unable to communicate with the sponsor at a basic level.
16. Having considered the record of the marriage interview, it is clear that attempts were made to have the appellant communicate basic information to his wife, and vice versa, but they were unable to do so. I also note that his wife also said that she doubted she would be able to complete a language test, but was urged to at least try.
17. Other than the bare assertion in the generalised grounds of appeal that the marriage was genuine, there was no evidence at all from the appellant to contradict the reasonable suspicion that this was a marriage of convenience. The Tribunal adequately investigated all the evidence that was before the tribunal. Even though some of the documents relied on were apparently absent from the respondent’s bundle, I note that the appellant had not asserted that the account of the marriage interview set out in the RFR was in any way inaccurate. He did not address at all the

alleged inability of he and his sponsor to communicate at even a basic level, or his mistake as to the language she spoke.

18. In all the circumstances, the conclusion of the First-tier Tribunal was fully open on the limited evidence, which went entirely one way. The judge did not misapply the burden and standard of proof.

Conclusion & Decision

19. The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law such that the decision should be set aside.

I do not set aside the decision. The decision of the First-tier Tribunal stands and the appeal remains dismissed.



Signed

Deputy Upper Tribunal Judge Pickup

Dated

Anonymity

I have considered whether any parties require the protection of any anonymity direction. No submissions were made on the issue. The First-tier Tribunal did not make an order pursuant to rule 13(1) of the Tribunal Procedure Rules 2014. Given the circumstances, I make no anonymity order.

Fee Award

Note: this is not part of the determination.

In the light of my decision, I have considered whether to make a fee award pursuant to section 12(4)(a) of the Tribunals, Courts and Enforcement Act 2007.

I make no fee award.

Reasons: The appeal has been dismissed

A handwritten signature in black ink, appearing to be 'J. Marshall'.

Signed

Deputy Upper Tribunal Judge Pickup

Dated