



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

Appeal Number: IA/25601/2015

THE IMMIGRATION ACTS

**Heard at Field House
On 24 November 2017**

**Decision & Reasons
Promulgated
On 14 December 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE BAGRAL

Between

**MUHAMMAD ADNAN
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms B Asanovic, of Counsel, instructed by M & K Solicitors
For the Respondent: Mr S Walker, Senior Home Office Presenting Officer

REMITTAL AND REASONS

Introduction

1. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge M.A. Khan (hereafter “the judge”), promulgated on 6 December 2016, dismissing his appeal. The appeal to the First-tier Tribunal had been against a refusal by the Respondent to issue the Appellant a residence card as a family member of an EEA national. Essentially the Respondent concluded that the Appellant’s marriage to his EEA national spouse was a marriage of convenience contrary

regulation 2 of The Immigration (European Economic Area) Regulations 2016 (hereafter “the EEA Regulations”).

2. At the hearing before the judge both parties were represented. The judge heard evidence from the Appellant and his wife. The latter gave evidence in English. The circumstances in which she did so are referred to by the judge at [23] as follows:

“I the heard evidence from Mrs Catia Cristina Ferreira, the appellant’s wife (Mr Mahmood stated that the witness spoke very little English and it may be difficult to communicate with her, no interpreter has been booked). The witness was shown her witness statement, which she adopted.” (sic)

3. At [25] the judge then stated thus:

“I asked the witness that she spoke very little English, it has been a difficult process for her to give evidence, how did she manage to communicate with her husband? The witness said that her husband speaks to her very very slowly. She said he only speaks few words of Portuguese.” (sic)

4. The judge concluded that the evidence of the Appellant’s and that of his wife was not credible and he noted various inconsistencies between their evidence. In his omnibus conclusion the judge stated at [34]:

“However, the appellant’s EEA sponsor, a Portuguese national speaks very little English, the appellant does not speak any Portuguese. She said in evidence that the appellant speaks very very slowly with her so she is able to to under stand him. On the evidence before me, on the balance of probabilities, I find that the level of the EEA sponsor’s knowledge of English is so low that a meaningful communication and conversation cannot be held between them. There I find that the fact that the couple have a son does not give rise to a genuine and subsisting relationship.” (sic)

5. The judge thus concluded that the marriage is a marriage of convenience. The judge further found that the Appellant’s wife was not exercising treaty rights because she had ceased employment following childbirth and did not intend to return to work until her son was old enough to attend nursery. Accordingly, he dismissed the appeal.
6. The Appellant applied for permission to appeal to the Upper Tribunal. Permission to appeal was granted by Upper Tribunal Judge Southern on

26 September 2017 who considered that it was arguable that the judge erred in law for the reasons given in the grounds.

Decision on Error of Law

7. At the hearing, following a discussion with the representatives, it was agreed that the judge's decision is unsustainable.
8. There are difficulties with the judge's approach and consideration of the evidence. It is not clear in what circumstances the judge proceeded to receive evidence from the wife without an interpreter and neither party was able to provide any assistance on this point at the hearing – the Appellant has since changed representatives and Ms Asanovic did not represent him before the First-tier Tribunal. While this is troubling, it is agreed, rightly, that the fact that the judge considered it appropriate to proceed and to hold against the Appellant the answers given by his wife in cross-examination sits uncomfortably with the conclusion that she was incapable of meaningful communication in English, the language of communication between them. In my judgement, the judge's consideration and analysis of the evidence is tainted by legal error on the grounds of perversity. That error further infects the judge's tangential consideration of the evidence that the couple have a child which he appeared to accept at [34].
9. I also agree that the judge erred by his failure to apply the principles enunciated in the case of Saint Prix v UK (Case C-507/12) in determining that the wife was not exercising treaty rights following child birth.

Notice of Decision

The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.

I set aside the decision of the First-tier Tribunal.

I remit the case to the First-tier Tribunal for a rehearing of the appeal by a judge other than Judge M.A Khan.

An Urdu and Portuguese interpreter will be required for the rehearing.

No anonymity direction is made.

Signed

Date 9 December 2017

Deputy Upper Tribunal Judge Bagral