



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: EA/00881/2016

THE IMMIGRATION ACTS

Heard at Field House
On 5 April 2018

Decision & Reasons Promulgated
On 8 May 2018

Before

UPPER TRIBUNAL JUDGE PITT

Between

MR IRFAN AHMAD
(NO ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Jafar, Counsel on Direct Access

For the Respondent: Ms A Everett, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This decision is the remaking of the appeal of Mr Ahmad against the Secretary of State's decision dated 8 January 2016 which refused a residence card showing his status as someone in a durable relationship of an EEA national exercising treaty rights.
2. Mr Ahmad is a citizen of Pakistan and was born on 5 April 1976. He bases his claim that he is entitled to a residence card on his relationship with Ms Paulina Kamykowska, a Polish national.

3. Mr Ahmad's appeal was initially refused by First-tier Tribunal Judge Plumptre in a decision dated 6 September 2017 which did not address the merits of the case but found that there was no First-tier Tribunal jurisdiction. In a decision dated 27 February 2018 Upper Tribunal Judge Reeds found an error of law following the Court of Appeal case of **Khan v SSHD [2017] EWCA Civ 1755**. The decision of the First-tier Tribunal was set aside to be remade in the Upper Tribunal.
4. I heard evidence from Mr Ahmad, Ms Kamykowska, her mother, Mrs Teresa Kamykowska and from Mr Abdul Saeed, a former colleague of Ms Kamykowska. Ms Kamykowska began giving her evidence in English but it became apparent that she required a Polish interpreter and the hearing was adjourned until one could attend. Her mother also gave evidence through a Polish interpreter. In addition to the oral evidence, I heard submissions from Mr Jafar and Ms Everett.
5. The background to this matter is that Mr Ahmad came to the UK from Pakistan on 2 September 2007 with leave as a student and retained that leave until 28 February 2009. He applied on 27 October 2008 for further leave to remain but this was refused. He appealed against that refusal but on 14 October 2010 his appeal rights were exhausted. He remained in the UK thereafter, being an overstayer.
6. Mr Ahmad maintains that he met Ms Kamykowska in July 2013. The couple maintain that they have been in a relationship from approximately that time and therefore Mr Ahmad qualifies for a residence card recognising his status as being in a durable relationship with an EEA national following Regulation 8(5) of the EEA Regulations. This was why Mr Ahmad applied on 24 July 2015 for a residence card recognising the relationship.
7. The respondent refused the application for a residence card for a number of reasons. The respondent did not find that the documents provided in support of the application were sufficient to show that the couple were in a durable relationship. The documents provided were in the form of copies rather than originals. Certain documentary requirements for tenancies and deposits were not provided with the tenancy agreements. Little weight was placed on them as a result.
8. Further, on 9 December 2015 an enforcement officer visited the address that had been provided by Mr Ahmad, [-] Uxbridge Road. A person who lived there, Ms Zawada, was interviewed. She informed the enforcement officer, on being shown a photo of Mr Ahmad, that he had moved out of the address in February 2015. She maintained that he had lived at the address in one room on his own for six months. On the basis of that evidence, the respondent concluded that the couple had not been cohabiting at the address as claimed and that this cast doubt on the genuineness of the relationship.
9. Further, the respondent noted that the day after the visit, on 10 December 2015 the appellant notified the respondent of a change of address. It was found that this coincidence further undermined the reliability of the evidence that had been provided in support of the application.

10. The correct approach to a case where there is an allegation of a marriage of convenience is set out in the case of **Papajorgji (EEA spouse - marriage of convenience) Greece [2012] UKUT 00038 IAC**. The ratio of **Papajorgji** is that there is no initial burden on an applicant to adduce evidence showing that a marriage is not one of convenience if the respondent brings nothing indicating to the contrary. If the respondent does allege a marriage of convenience, then “there is an evidential burden on the claimant to address evidence justifying reasonable suspicion that the marriage is entered into for the predominant purpose of securing residence rights”. There is therefore a requirement for the respondent to have evidence “justifying reasonable suspicion”. Where that is so as at [39] of **Papajorgji**:

“In summary, our understanding is that, where the issue is raised in an appeal, the question for the judge will therefore be ‘in the light of the totality of the information before me, including the assessment of the claimant’s answers and any information provided, am I satisfied that it is more probable than not this is a marriage of convenience?’.”

11. In my judgment it is unarguable that the respondent had evidence “justifying reasonable suspicion” here, where the written evidence before the Secretary of State as of the date of the decision was relatively limited and where the enforcement visit had led to the statements set out above from Ms Zawada about the couple not living at that address and the appellant having lived there alone. I must therefore consider “the totality of the information before me” and decide whether on the balance of probabilities whether this is a marriage of convenience.
12. There were a number of aspects of the evidence supporting the claim that the appellant and Ms Kamykowska were in a genuine relationship. Not least of this was the personal appearance of Ms Kamykowska’s mother at the hearing. The fact that she was prepared to travel from Poland to give evidence suggested to me that she believed that the relationship between her daughter and the appellant was genuine. Mrs Kamykowska’s evidence about the relationship history of the couple was consistent with that provided by them and, in my view, reflected what she, as a prospective mother-in-law living in a different country, could be expected to know about the relationship. Her evidence attracted weight to the appellant’s case, therefore.
13. There were also bank statements and other documents such as driving licences, NHS letters and college letters addressed to the appellant and Ms Kamykowska at [-] Princess Road, [-] Uxbridge Road and [-] Brabazon Road at the times they claim to have been living together at those addresses. That evidence must be weighed in their favour when considering whether, on the balance of probabilities, they are in a genuine relationship. This was not determinative evidence, however, and to an extent limited by there being no correspondence at all addressed to the couple jointly.
14. The couple also provided photographs of them on different occasions showing them together and appearing to be a happy couple. There were also printouts of text and computer message exchanges suggestive of a relationship.

15. I also noted Ms Kamykowska's distress at the end of her evidence when talking of how difficult it would be for her were the appellant not allowed to remain and of her genuine love for him. Ms Kamykowska's distress, as far as I could judge, was genuine and I placed some weight on this, taking a cautious approach however given the well-rehearsed dicta on placing weight on demeanour.
16. Mr Saeed's evidence was also supportive of the couple's claim to be in a genuine relationship. Nothing about his evidence suggests that he is particularly close to either the appellant or Mr Ahmad, however, and it was my view that I could place some but not a great deal of weight on Mr Saeed's evidence as a result.
17. There were also aspects of the evidence that had to be weighed against the claim that the relationship was genuine.
18. Mr Ahmad stated clearly in his oral evidence that he was supported by Ms Kamykowska as he did not work. He stated that when he needed money from her he would ask. He stated that "we use the same bank account". He was asked specifically if he had any other income and stated "no".
19. Mr Ahmad also stated in response to the question "are you religious?" as follows:

"Not much. I'm Muslim. I used to pray, now for many years I haven't prayed that much. I don't observe on a daily basis. It's a long time since I've been to the mosque, more than a year."
20. When asked about the appellant's income, Ms Kamykowska stated that he had money sent to him by his mother and his siblings. She thought that it was approximately £300 to £500 a month. Sometimes it was per month and sometimes it was per week or sometimes per fortnight. It was to help him pay for the house. When he had money from his family he helped paying the rent. Generally, however, she paid the rent as she worked. Ms Kamykowska also referred to having a "common bank account" and "a shopping card". Both she and Mr Ahmad referred to using the same bank account.
21. Ms Kamykowska was asked about Mr Ahmad's religious practice. She was asked whether he was a practising Muslim and stated "I think so". When asked how often he went to the mosque she stated "sometimes he goes on Fridays". She was asked roughly how often he went to the mosque and stated "let's say twice a month". She referred to him praying at home. She was asked when he last went to the mosque and stated:

"Maybe a month ago. He worshipped this morning at home. I brought him that mat as a present."
22. In re-examination Ms Kamykowska was asked again about when Mr Ahmad last went to the mosque. She confirmed that it was approximately a month ago. She also stated that he prays approximately three times a week at home, sometimes more. She confirmed that he went to the mosque approximately twice a month. The frequency of the attendance had not changed. If anything, she thought that he

prayed more now because he was concerned about having to return to Pakistan. Asked again about whether his observance by way of going to the mosque had changed she stated that he sometimes went five times a month, sometimes three times a month or would pray at home. She then stated "mainly he used to go on a Friday". She was then asked when he had stopped going five or three times a month she replied "he mostly prays at home". She stated that the change from practising three or five times a month of going to the mosque had changed approximately two months ago.

23. The evidence of the appellant and Ms Kamykowska on the appellant's finances and religious practice, two matters upon which they could be expected to be very highly consistent if they were living together in a genuine relationship, was starkly inconsistent. The two very different accounts of the appellant living off Ms Kamykowska with no other income and being in receipt of notable funds from his family are not reconcilable. Both the appellant and Ms Kamykowska referred to using the same bank account but nothing in the documents showed that they had a joint account or access to the same account. On the contrary, the bank statements provided showed that Mr Ahmad has his own bank account through which reasonably significant sums of money come and go. On page 190 of the bundle, for example, the bank statement shows a balance of over £3,000 for a great deal of the month with a sum of £410 being paid out as a room deposit, a cash withdrawal being taken out on 15 April 2015 and £850 cash paid into the account.
24. The other stark discrepancy in the evidence is that concerning Mr Ahmad's religious observance. The evidence of the appellant and Ms Kamykowska on this is again extremely different and again on a matter upon which there is no reason why the parties should not be consistent. The highly inconsistent evidence on these two matters indicated strongly that the relationship was not genuine.
25. Further, I accepted that Mrs Kamykowska, the appellant and Ms Kamykowska gave generally consistent evidence about serious disagreements between Ms Kamykowska and Ms Zawada which they maintained explained her untruthful comments made to the enforcement officer in December 2015. I accept that it is possible, albeit unusual, that a friend such as Ms Zawada, after an intense argument, could have acted in the malign manner described and give false information to the immigration authorities, regardless of the extremely serious implications this would have.
26. None of the evidence here addressed the fact of the appellant's change of address to [-] Brabazon Road arriving with the respondent the day after the enforcement visit, however. The materials before me did not contain a tenancy agreement or other documents showing when the appellant and Ms Kamykowska moved to Brabazon Road. Their evidence was that after moving out prior to the enforcement visit, they had not had any contact with Ms Zawada so the change of address could not have been provided in response to that visit. I found the change of address being notified to the respondent the day after the visit and absence of documents showing when the move to Brabazon Road undermined the explanation for the information provided by Ms Zawada to the enforcement officer.

27. There was also shifting evidence concerning Ms Kamykowska's arrival in the UK in 2013 and the involvement of Ms Zawada which further undermined the claim that the couple were in a genuine relationship. The witness statements were set out in very similar terms, maintaining only that the couple met on Facebook. The appellant asked Ms Kamykowska to come to the UK and sent her a ticket. She came on 6 August 2013, he met her at the airport and took her to a house where he had arranged for her to have a room. After a month she moved in with him at [-] Princess Road. They became engaged on Valentine's Day 2014. In August 2014 the couple moved to [-] Uxbridge Road, a "new" address. Ms Kamykowska's mother visited them there for approximately a week in October 2014. The appellant asked his fiancée's mother for permission to marry and she consented during that visit.
28. The appellant, Ms Kamykowska and her mother all stated at the hearing, however, that Ms Kamykowska and Ms Zawada were old friends from Poland, having studied at college together. They also all confirmed that when Ms Kamykowska came to the UK in July 2013 she moved into a room at [-] Uxbridge Road which is where Ms Zawada was also living.
29. The appellant stated that Ms Kamykowska came to the UK to meet him. In her evidence Ms Kamykowska stated that she came to the UK for work and to see Ms Zawada and Mr Ahmad. She was asked whether Ms Zawada was expecting her to come to stay in the UK and she stated:
- "Yes, I came because I knew her. She promised me work. That she would help me in England but she didn't."
30. Ms Kamykowska was asked whether she met Mr Ahmad through Ms Zawada. She replied "I think so, but he sent me a ticket in order to let me come to the UK". She was then asked whether Ms Zawada put her in contact with Mr Ahmad. Ms Kamykowska again stated "I think so". She was asked whether she had arranged to stay with Ms Zawada before coming to the UK and replied "yes". She then stated that Mr Ahmad had made the arrangements for her to live with Ms Zawada. Ms Kamykowska was also asked whether Mr Ahmad had known Ms Zawada before she had come to the UK. She stated that Ms Zawada and her boyfriend and Mr Ahmad were friends.
31. If that was so, it is not clear to me why this involvement of an old friend who introduced Ms Kamykowska to Mr Ahmad and with whom she shared a house on arrival in the UK would not have been mentioned in the witness statements. The original version of how the couple came to know each other and meet in the witness statements makes no reference to Ms Zawada, to the appellant and Ms Kamykowska both already knowing her, to her introducing them, to Ms Kamykowska living with her when she first came to the UK. I found it notable that in their witness statements neither the appellant nor Ms Kamykowska referred to [-] Uxbridge Road as her place of former residence but state that when they went to live there in 2014 as a "new place". That was not correct. Ms Kamykowska had lived there before, had done so because her friend Ms Zawada was living there and she and the appellant knew that to be so.

32. It is not just that there is inconsistent evidence about how the appellant and Ms Kamykowska came to know each other and why she came to the UK that weighs against the appellant here. It is that the first account omits any mention of Ms Zawada, the person who provided significant information to the respondent undermining the claim that the appellant and Ms Kamykowska were in genuine relationship. This add to the lack of clarify already surrounding the couple moving out of [-] Uxbridge Road but the respondent not being made aware of this until after the enforcement visit and, coincidentally, on the very day after that visit.
33. There other matters that undermined the claim that the couple were in a genuine relationship. The witness statements of the appellant and Ms Kamykowska are clear as to the couple becoming engaged on Valentine's Day 2014. This is a significant date for a significant event. It is one that the couple could be expected to remember. Neither could do so, in their oral evidence, being somewhat vague as to when they decided to get married.
34. Further, the witness statements also maintained that Mr Ahmad asked Ms Kamykowska's mother for permission to marry when she visited the couple in the autumn of 2014. When asked at the hearing when he asked the mother's permission to marry, Mr Ahmad stated that it was in approximately 2016 when they had booked a marriage ceremony which was later cancelled. He then stated that he had spoken to Mrs Kamykowska earlier about the marriage but again linked this to booking the wedding ceremony. When asked again about any earlier discussion of the couple marrying, he referred to it being "at the end of 2014 - by 2015 we definitely did". Again, given his very limited direct contact with Mrs Kamykowska and claim in the witness statements to have asked her in person during her only visit, I found this inconsistency undermined the weight I could place on Mr Ahmad's evidence.
35. In summary, as above, there are positive aspects of the evidence supporting the claim of Mr Ahmad to be in a genuine relationship with Ms Kamykowska. However, the very significant discrepancies concerning the appellant's finances and religious practice, shifting evidence as to how the couple came to know each other and Ms Zawada's involvement in Ms Kamykowska coming to the UK, unclear evidence as to the change of address at the exact time of adverse information being given to an enforcement officer and lack of consistency as to when the couple decided to marry and when permission was sought from Ms Kamykowska's mother lead me to find, on balance, notwithstanding the positive aspects of the evidence, that the relationship between Mr Ahmad and Ms Kamykowska was not genuine. I must therefore find that Regulation 8(5) is not met.
36. The appeal is dismissed under the EEA Regulations.

Signed: 
Upper Tribunal Judge Pitt

Date: 3 May 2018