



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: EA/01855/2017

**THE IMMIGRATION ACTS**

Heard at The Royal Courts of Justice, Belfast  
On 17 May 2018

Decision & Reasons Promulgated  
On 7 June 2018

Before

**UPPER TRIBUNAL JUDGE LANE**

Between

**AHMED ELBAGHDADY**  
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Not present or represented

For the Respondent: Ms O'Brien, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant, Ahmed Elbaghdady, was born on 26 October 1985 and is a male citizen of Egypt. He appealed against a decision dated 17 February 2017 to refuse to issue him with a residence card as confirmation of his right of residence under European Community Law and European Communities. The appellant appealed to the First-tier Tribunal (Judge Doyle) which, in a decision promulgated on 3 October 2017, dismissed the appeal. The appellant now appeals, with permission, to the Upper Tribunal.

2. At the outset of the hearing, I was addressed by Mr Hollywood of Andrew Russell & Co Solicitors. Mr Hollywood sought to terminate his firm's retainer with the appellant. The appellant had been returned to Egypt from the United Kingdom on 2 June 2017. For a period of time Russell & Co had maintained contact with the appellant via email but there no instructions at all had been forthcoming in recent months. In the circumstances, and notwithstanding that the appellant has given no notice that he is no longer represented (see Tribunal Procedure (Upper Tribunal) Rules 2008, paragraph 10(b)) I gave permission for Andrew Russell & Co to withdraw as representatives for the appellant before the Upper Tribunal.
3. The notice of hearing was served on the appellant's last known address in Egypt as long ago as 26 February 2018. I have no reason to suppose that the notice of hearing has failed to reach the appellant. In the circumstances, I proceeded to determine the appeal in the absence of the appellant.
4. Ms O'Brien, who appeared for the Secretary of State, told me that she intended to rely upon the Rule 24 notice dated 15 November 2017 which had been submitted by the respondent.
5. Judge Doyle concluded that the appellant and the EEA national had entered a marriage of convenience [11(n)]. He applied the relevant jurisprudence (*Rosa* [2016] EWCA Civ 14). In essence, he did not believe the evidence adduced in the appeal by the appellant or by the witness, Ms Derezinska.
6. For the most part, the grounds of appeal are little more than a series of disagreements with findings available to the judge on the evidence. The appellant complains that the judge gave insufficient weight to the fact that the parties had been living together when the appellant had been arrested in February 2017. Likewise, the judge had placed little weight on documentary evidence of "instantaneous messaging between the parties" and had, conversely, placed too much weight on the failure of the parties to make any "attempt to meet." However, the judge has given extensive reasons as part of a careful and thorough decision to support the findings with which the appellant now disagrees. Those findings are not perverse on the evidence nor is there any suggestion that the judge has omitted to consider relevant evidence or that he has considered irrelevant evidence.
7. The grounds also challenge the decision on the basis that the judge applied the wrong test for determining whether the marriage is one of convenience. At [11(m)] the judge had written:

When I consider each strand of evidence I find that the respondent establishes that the appellant entered into the marriage solely to obtain an advantage under the Immigration (EEA) Regulations. Distressing as this may be for the EEA national, I find that the appellant entered marriage predominantly in the hope of obtaining a residence card. I find the marriage is a marriage of convenience.

8. In *Rosa* (see above) the Court of Appeal had held that the “sole aim” of a marriage of convenience would be to circumvent the Rules for entry and residence to a particular country. The grounds argue that, by finding that the marriage had been entered into “predominantly” with a view to obtaining a residence card, the facts as found by the judge did not satisfy that “sole aim” test. I reject that submission. In the same paragraph (see above) the judge has made a clear finding that the appellant had entered into the marriage “solely to obtain an advantage under the Immigration Regulations.” I find it likely that he has subsequently used the adverb “predominantly” out of a desire not unduly to distress the EEA national “spouse.” The use of the adverb may be infelicitous but nothing whatever turns upon it.

**Notice of Decision**

9. This appeal is dismissed.
10. No anonymity direction is made.

Signed

Date 1 JUNE 2018

Upper Tribunal Judge Lane

**TO THE RESPONDENT**  
**FEE AWARD**

I have dismissed the appeal and therefore there can be no fee award.

Signed

Date 1 JUNE 2018

Upper Tribunal Judge Lane