



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

Appeal Number: EA/06534/2016

**THE IMMIGRATION ACTS**

**Heard at The Rolls Building, London**

**Decision & Reasons  
Promulgated**

**On 8 February 2018**

**On 20 April 2018**

**Before**

**UPPER TRIBUNAL JUDGE LANE**

**Between**

**FAHAD HABIB  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Ms Anifowoshe

For the Respondent: Ms Brocklesby-Weller, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant, Fahad Habib, was born on 28 January 1985 and is a male citizen of Pakistan. He appealed to the First-tier Tribunal (Judge E B Grant) against a decision of the respondent dated 23 May 2016 to refuse to issue him with a permanent residence card as confirmation of a right of residence as the spouse of an EEA national exercising Treaty Rights. The First-tier Tribunal, in a decision promulgated on 19 October 2017,

dismissed the appeal. The appellant now appeals, with permission, to the Upper Tribunal. There has been some confusion as to the extent of the grant of permission. This was resolved by notice of decision issued by Upper Tribunal Judge Hanson on 15 January 2018. Judge Hanson's direction made it clear that permission had been granted on all grounds of appeal.

2. There are four grounds of appeal. First, the appellant complains that there was a procedural irregularity amounting to unfairness in that the appellant was deprived of his right to be represented by a friend who had attended before the First-tier Tribunal. The appellant asserts that the friend would not receive payment and should have been heard as a representative.
3. The ground has no merit. At [3], the judge addresses the question of the appellant's representative, Mr Deka. It was apparent that Mr Deka told the judge that he wished to act as the appellant's McKenzie friend. He had occupied a position in the place normally reserved for the appellant's representatives. The judge asked him a few questions about his identity and then suggested that he could "sit by the appellant and give advice as and when the appellant needed advice. During the hearing when required the appellant conferred with Mr Deka." Given that Mr Deka had identified himself as a McKenzie friend rather than representative, the manner in which he was treated by Judge Grant was wholly reasonable. She allowed Mr Deka to act as a McKenzie friend, which is what he had sought to do.
4. Secondly, the appellant asserts that the judge reversed the burden of proof. It is the Secretary of State's case that this appellant had entered a marriage of convenience. The appellant asserts that the judge appeared to cast the burden of proof upon the appellant, rather than the respondent.
5. The ground of appeal has no merit. Whilst Ms Brocklesby-Weller, for the respondent, accepted that the judge had perhaps gone too far when at [19] she found that there was "*not a shred* of credible evidence before the Tribunal" [my emphasis] that the sponsor had been exercising Treaty Rights at the time of her divorce from the appellant however the fact remained that the judge had accepted at [14] that the Secretary of State had established a *prima facie* case for the fact that the marriage was one of convenience. She went on at [15] *et seq* to address the evidence of both parties. She rejected the evidence of the appellant himself as "most unsatisfactory" noting, for example that, "the bank statement in the party's name with no activity on it at all does not support the claim the marriage was genuine. Quite the reverse. It suggests that the marriage and the account opening the bills in joint names etc. were part of a package to convince the respondent to issue the first residence card and it worked because he succeeded in getting one residence card." I am not concerned that the judge is here reversing the burden of proof, as the appellant argues; she is simply addressing that evidence which was put before her, including the evidence of the appellant. Ultimately, the judge rejected the appellant's own evidence as satisfactory and unreliable and

accepted that the Secretary of State had discharged the burden of proving that the marriage was not genuine.

6. Thirdly, the appellant asserts that the judge had not given adequate reasons for rejecting such evidence as the appellant himself had adduced. The grounds provide explanations for evidence which the judge found unsatisfactory, including the bank statement (see above). The ground of appeal is without merit. It amounts to nothing more than a disagreement with findings which were available to the judge on the evidence and which the judge has supported with cogent reasons.
7. Fourthly, the appellant challenges what the judge says at [19]. Once again, this is nothing more than disagreement with findings available to the judge. Indeed, I would not go so far as Ms Brocklesby-Weller to criticise the judge's observation that there was "not a shred of credible evidence before the Tribunal" regarding the sponsor's exercise of Treaty Rights; it would be true to say that there was evidence before the Tribunal but Judge Grant made it very clear that she did not regard that evidence as "credible." The judge's decision is brief but it is, in my opinion, adequate for the purpose having addressed all the relevant evidence and made appropriate findings of fact with respect to it.

### **Notice of Decision**

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

Signed

Date 18 APRIL 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 18 APRIL 2018

Upper Tribunal Judge Lane