



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/00446/2015

THE IMMIGRATION ACTS

Heard at Manchester
On 9th February 2018

Decision & Reasons Promulgated
On 28th February 2018

Before

Upper Tribunal Judge Chalkley

Between

MUHAMMAD WAHAB
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: No representative

For the Respondent: Mr C Bates, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Pakistan, born on 14th March 1986, and he appealed to the First-tier Tribunal against the decision of the Secretary of State, taken on 13th December 2014, to refuse to grant him a residence card as a spouse under Regulations 2 and 6 of the Immigration (European Economic Area) Regulations 2006 (“the Regulations”).
2. Having arrived in the United Kingdom on 18th August 2013, as a student with leave until 19th January 2014, the appellant applied to the First Tier Tribunal on 19th

January 2014, for leave as a Tier 4 Migrant. This was subsequently refused on 16th August 2014. Meanwhile, the appellant met his wife and on 16th April 2014, he underwent an Islamic wedding with her. On 21st July 2014, they both underwent a registry office wedding. The appellant applied for a residence card on 7th August 2014.

3. The appeal was first heard by First-tier Tribunal Judge Lambert.
4. At a hearing before me in Manchester on 20th October 2016, I concluded that there were material errors of law in the determination of Judge Lambert, because she had failed to make findings of fact on oral evidence she heard from two witnesses in support of the appellant who gave oral evidence to her. A copy of my reasons for finding an error of law is set out below at Appendix A.
5. I believe that at that hearing I handed to Counsel a variety of documents upon which the appellant relied. I asked that they be placed in one properly indexed and paginated bundle and then be re-submitted to the Tribunal.
6. I am advised that the documents have not been re-submitted to the Tribunal.
7. The matter next came for hearing before me on 20th April 2017 when the Secretary of State was represented by Mr G Harrison, a Senior Home Office Presenting Officer and the appellant was represented by Mr Sabir of Counsel instructed by MBS Solicitors. Mr Harrison explained that he had a transcript of an interview record conducted with the appellant, but he needed to refer it to the Immigration Officer for him to confirm it was a true and accurate record. Mr Harrison told me that he had agreed with Counsel that if this appeal were to be adjourned for eight weeks it might well shorten the hearing. He and Mr Sabir asked that I list the matter for mention only on the first available date after 20th June 2017. I excused the appellant's attendance.
8. The matter was listed for hearing on 22nd June, when Mr M Sabir of Counsel again appeared on behalf of the appellant and Mr Harrison appeared on behalf of the respondent. The hearing was before Deputy Upper Tribunal Judge D M W Pickup. Mr Sabir had gone through the record of the interview notebook, but some parts of it needed clarification and he and Mr Harrison agreed that the matter should be adjourned for a further eight week period after which it could be listed for hearing.
9. Despite my having noted on the file that the matter could be referred to any Upper-tier Judge or Deputy Judge, Judge Pickup adjourned the matter for hearing before me.
10. The matter was next listed before me on 15th September 2017, when there was no appearance by the appellant. Mr Harrison again attended on behalf of the respondent. I noted from the file that the appellant's former solicitors had notified a change of address to the Tribunal. Unfortunately, the Tribunal had not marked the

note of address on the file and had sent the Notice of Hearing to the wrong address. I adjourned the hearing and marked the file to indicate that it was **not** reserved to me. It was re-listed for rehearing again on 23rd November 2017. The matter was heard by Upper Tribunal Judge Plimmer. She noted that there was no attendance by the appellant. Mr Harrison told Judge Plimmer that he had two telephone numbers for the appellant and his wife. After a brief adjournment Mr Harrison told Judge Plimmer that he had tried ringing both numbers but without success.

11. Rather than proceed with the hearing in the absence of the appellant, Judge Plimmer adjourned the matter and instructed that it should be listed before me. The earliest date the matter could be listed before me was today, 9th February.
12. I apologise to the parties for the delays in hearing this matter. Such delays are inevitable when matters are reserved to part time judges.
13. At 11.15 the usher told me that there was no appearance by the appellant.
14. I noted from the file that notice giving the date, time and place fixed for the hearing of the appeal had been sent to the appellant's last known address on 10th January and no explanation offered for the appellant's non-attendance.
15. Given that the appellant had failed to attend the matter on 23rd November and had failed to comply with Judge Plimmer's directions that he should file and serve a written explanation for his failure to attend the Tribunal on 23rd November 2017 before 1st November 2017, and believing there to be no reason why I could not justly dispose of the hearing of the appeal in the absence of the appellant, I decided to proceed with the hearing in his absence.
16. In September 2013, the appellant made contact with a Miss Kondratavicitu ("the sponsor"), a Lithuanian national residing in Lithuania, via Facebook. She came to the United Kingdom with her child on 3rd January 2014, and the appellant apparently met her at the airport following which she and her child went to live with him at his home. It appears that on 6th April 2014, they underwent an Islamic wedding ceremony and later, on 21st July 2014, they underwent a registry office marriage. It was on 7th August 2014, that the appellant made an application which resulted in this appeal.
17. On 4th December 2014, Immigration Officers attended the appellant's home and concluded that he and the sponsor were not in a genuine relationship. His application for a residence card was refused on the basis that the marriage between him and the sponsor was one of convenience. I have a photocopy of a record of an Immigration Officer's notebook and I have a typed transcript of that notebook, a copy of which had been earlier handed to the appellant's Counsel at an earlier hearing before me. When questioned about how long she had been married, the sponsor replied, "English marriage five months. I forgot the date". It appears that she then produced a copy of her marriage certificate showing that she was married

on 21st July 2014. She explained that she underwent a Muslim marriage on 6th April 2014. She explained that she met her husband on Facebook and he invited her to come to England after they had been in communication for some three months. She explained that she was working behind a bar and that her husband was currently working in the same restaurant, Lal Qila. She said that she slept with her husband at the property and that she and her husband communicate in English.

18. A Home Office report referred to the interview with the sponsor and expresses the view that the marriage did not seem to be genuine. The ground floor bedroom appeared,

“to be staged with two white shirts and some socks that belong to Mr Wahab. The majority of Mr Wahab’s clothing are in the upstairs back bedroom. [The sponsor] said that Mr Wahab and Mr Atif Munir eat and talk in the upstairs back bedroom. This seems highly unlikely as there is no table in the upstairs back bedroom and the house has a living room and dining room on the ground floor where it would be easier to eat and talk”.

The Immigration Officer thought it would have been more appropriate for the family to reside upstairs in the back bedroom, as it was larger than the bedroom on the ground floor. The Chief Immigration Officer who searched the house on entry noticed that all bedrooms on the first floor appeared to be lived in.

19. The sponsor claimed that she had two or three photographs of the couple on Facebook, but was only able to show one photograph of her and Mr Wahab where they were standing side by side. There were no wedding photographs on Facebook and when this was queried with the sponsor she said that she had sent the photographs to her family directly. She was asked if she had any other photographs and explained that her tablet was only a couple of weeks old. The interviewing officer noticed that on being showed the photographs on the tablet there appeared to be many of the sponsor’s child as a baby and photographs of her family in Lithuania. There were no photos on the tablet of the couple or the couple’s marriage. The appellant was not present at the premises during the inspection.
20. I have read the appellant’s lengthy grounds of appeal and I have also read the appellant’s application to the Secretary of State, with accompanying documents including evidence from Archway Ventures Limited trading as Lal Qila confirming that as at 1st August 2014, the sponsor was employed as a bar assistant and had been since 1st February 2014, working 40 hours per week earning £1,093.78 per month. I also saw a letter from Manchester City Council addressed to both the appellant and sponsor at the same address dealing with arrears of council tax. There was no other evidence before me.
21. I am satisfied that the evidence adduced by the respondent justifies reasonable suspicion that the marriage between the appellant and sponsor was entered into for the predominant purpose of securing residence rights. The evidential burden therefore passes to the appellant to address that contention (*Papajorgji (EEA spouse –*

marriage of convenience) Greece [2012] UKUT 00038, Agho [2016] EWCA Civ 1198 and Sadowska and Others v Secretary of State for the Home Department [2017] UKSC 54.

22. The appellant has adduced no credible evidence at all.
23. The appellant has been given every opportunity to present his case but has chosen not to avail himself of those opportunities. I believe that the marriage between the appellant and sponsor is a marriage of convenience and as such is excluded by Regulation 2 of the 2006 Regulations.
24. The appellant's appeal in respect of a decision to refuse to issue him an EEA residence card is dismissed.

No anonymity direction is made.

Richard Chalkley

Upper Tribunal Judge Chalkley

Date: 27 February 2018

TO THE RESPONDENT

FEE AWARD

The appeal has been dismissed and there can therefore be no fee award.

Richard Chalkley

Upper Tribunal Judge Chalkley

Date: 27 February 2018