Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: EA/00916/2017

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 4 February 2019	**On 1 May 2019**

Before

UPPER TRIBUNAL JUDGE PERKINS

Between

MUHAMMAD AWAIS
(anonymity direction not made)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms S Saifolahi, Counsel instructed by Sterling Law Solicitors
For the Respondent: Mr T Melvin, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal by a citizen of Pakistan against the decision of First-tier Tribunal Judge Geraint Jones QC dismissing his appeal against a decision of the Secretary of State to refuse him a residence card pursuant to the Immigration (EEA) Regulations 2006 on the basis of his marriage to an EEA national, in this case a citizen of Spain.
2. The Judge recognised, correctly, that it was for the Secretary of State to prove that the marriage is a marriage of convenience. The judge found that burden had been discharged. In short, he found the appellant to be dishonest and the timing of his application set against the rest of his immigration history to be revealingly cynical.
3. I begin by considering very carefully the decision of the First-tier Tribunal Judge. There is no doubt that the decision could have been written with more grace but it does not follow from that criticism that it is wrong in law.

4. He dealt with the immigration history. He noted that on 11 July 2016 the appellant applied for a residence card on the basis of his marriage to a Spanish national. The appellant was born in 1990 and his wife in 1988. The appellant's wife originally came from Morocco. He is from Pakistan. They are both generally thought of as countries where much of the population follows Islam.

5. The judge noted that it was the appellant's case that he met his wife "on Facebook" in March 2015 and in person in November 2015. They decided to marry on 31 December 2015 and there was a wedding ceremony on 22 June 2016.

6. The appellant said that his wife was in full-time employment earning £1,248 gross.

7. The judge then acknowledged a decision of Immigration Judge Greasley promulgated on 7 March 2017 dismissing the appellant's appeal against a decision to refuse him asylum.

8. The Judge then resumed his consideration of the whole immigration history. The appellant applied for a student visa in May 2010. It was refused in June 2010. There was a further application in July 2010. It was granted and he had leave to remain as a student until 21 February 2012. That leave was extended following an in-time application until June 2013. Leave was extended again until October 2016 but curtailed in July 2014 because the appellant's sponsor informed the Home Office that he had stopped attending classes.

9. The judge noted with disapproval that although the appellant's leave to remain had been curtailed he continued to live in the United Kingdom without permission.

10. According to the judge the appellant "again surfaced" and applied for an EEA residence card in September 2015. The use of the phrase "again surfaced" is irritatingly casual but is not unlawful. At that time the appellant applied for an EEA residence card on the basis of his intended or actual marriage to someone called "Wanda". However, the application made in September 2015 was withdrawn in November 2015, and, in December 2015 there was a fresh application for an EEA residence card on the basis of being the primary carer of a British citizen. The application was refused in February 2016, and in March 2016 he applied for an EEA residence card on the basis of marriage. The application was refused on 25 April 2016. He was arrested, removal directions were set for 26 April 2016, and on the day of removal he claimed asylum.

11. The judge found the decision of Immigration Judge Greasley showed that the appellant was dishonest in his asylum claim and the judge found this illuminated his subsequent conduct. The judge did consider the overall evidence of the appellant and his wife. He found the evidence to be brisk and uninformative. It was the appellant's case that his relationship with his current wife "developed very quickly".

12. In his oral evidence he said that he met his wife when she arrived from Madrid in November 2015. They resumed cohabitation very shortly after arrival (I think on the day of arrival) and she got a job.

13. However, he said he did not know if his wife had worked in Madrid.

14. The judge clearly thought that the appellant's pervious persistent and unsuccessful applications for leave to remain, and often made later than they need have been if the appellant was serious about securing permission to remain in the United Kingdom indicated a determination to remain in the United Kingdom rather than to engage

responsibly with the requirements of immigration control. He clearly found nothing that suggested any tenderness or affection by the appellant towards his wife and he concluded that certainly at its outset the relationship was all about him and his having a convenient wife.

15. Permission was granted by Upper Tribunal Judge Smith who was concerned that the reasons given were not adequate. As I have already indicated the tone is depressing but the content is there. The judge found it was a marriage of convenience and the reasons are given. The timing was cynical, the relationship very short-lived before it was relied on for the purposes of marriage. The appellant was a dishonest person. When these findings were put together the judge's conclusion that was open to him.

16. It is claimed that the First-tier Tribunal Judge failed to engage with the grounds. The grounds are set out in the grounds of appeal to the Upper Tribunal. It is not clear to me if it is a criticism or just an observation that the First-tier Tribunal Judge gave no weight to the assertion that the respondent following a marriage interview thought the relationship was a marriage of convenience. The judge's point is nobody bothered to show him the record of the interview. The judge's conclusion was based on the chronology. The grounds also complain that the judge did not engage with the assertion that the respondent had not proved his case. That is unsustainable. The judge recognised the burden of proof and found that it was satisfied.

17. Reference is also made to the decision in **Sadovska v SSHD [2017] UKSC 54** but the judge was clearly aware that he was looking for a predominant rather than sole purpose. There is no error there. I also note the judge is criticised for not going through the bundle with more care. The judge's point is sound and it is for the appellant who produces a bundle to say why it is relevant and not for the judge to read it in the hope that something would turn up. Nevertheless, it might have been more sensible if the judge had read it and looked for points that illuminated the case. The bundle is not enormous.

18. The point is that the bundle gives some slight evidence of affection between the appellant and is wife and that they spent some together. None of that is in dispute or particularly weighty. It cannot be said that the judge ignored these points. They were not specifically relied on and did not undermine his primary findings which arises from the chronology and the appellant being disbelieved.

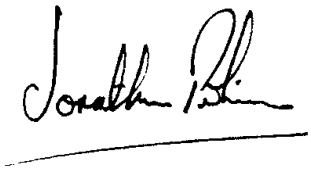
19. The grounds say that certain points are particularly relevant. Pages C8 to C11 (inasmuch as I can find them because the pagination appears to have been cut off by the photocopier) show some evidence of "chitchat" during cohabitation. Page C6 might require a bit more comment. It is dated 14 April 2016 and is from the Secretary of State and is headed "Investigation of proposed marriage or civil partnership". It is confirmation of compliance with an investigation. This shows that the parties have complied with the investigation and says in clear terms that the decision "does not constitute a determination as to the genuineness of the relationship on which it is based". As far as I can see it was considered by the judge. Certainly, there is underlining in red that I have not placed there. Failing to consider it, if that is what happened, is not a material error. It is expressly said not to be evidence of the point the judge had to determine.

20. Mr Melvin's submissions, in effect, were that the judge had done enough. On this occasion I find that Mr Melvin is right. Although I do not wish to be thought as giving

approval to the style of the decision which was abrupt, I am satisfied the decision was lawful. The judge knew what he had to decide and has given proper reasons for his decision that follows his having considered the evidence. It follows therefore that I dismiss the appeal.

Notice of Decision

The appeal is dismissed.



Signed
Jonathan Perkins
Judge of the Upper Tribunal

Dated 26 April 2019