Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: EA/01401/2016

THE IMMIGRATION ACTS

Heard at Field House	**Decision and Reasons Promulgated**
On 18 February 2019	**On 15 May 2019**

Before

UPPER TRIBUNAL JUDGE CANAVAN

Between

NAVEED AHMED
(anonymity direction not made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the appellant: Mrs R. Bagral instructed by Marks & Marks Solicitors
For the respondent: Mr I. Jarvis, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant appealed the respondent's decision dated 22 January 2016 to refuse to issue a permanent residence card as the family member of an EEA national under The Immigration (European Economic Area) Regulations 2006. The Secretary of State concluded, although a residence

card as a family member was issued previously, that this was in fact a marriage of convenience.

2. First-tier Tribunal Judge Skehan ("the judge") dismissed the appeal in a decision promulgated on 16 October 2018. The judge made clear that she understood the burden of proof lay on the respondent to show that it was a marriage of convenience contracted solely for immigration purposes. The judge summarised the reasons for refusing a residence card [5]. She considered the report of the immigration officers who conducted a visit to the appellant's address on 03 January 2016, where he claimed to live with the EEA sponsor [5.c]. The judge heard evidence from the appellant and the EEA sponsor, Miss [S], and summarised the main aspects [6]. The judge was in a position to assess the credibility of the witnesses and pointed out aspects of their evidence that were inconsistent [10]. She placed little weight on the report by the immigration officers because it was not supported by witness statements and was internally inconsistent [11]. However, the judge was satisfied that the respondent had discharged the initial burden of proof of showing that this was likely to be a marriage of convenience. The appellant previously fabricated an application for leave to remain as the unmarried partner of a British citizen in June 2009. The timing of the marriage to Miss [S] (December 2009) and her original incorrect statement that they had been living together for six months at the date of the initial residence card application were enough to discharge the initial burden [12]. The judge considered the "multitude of inconsistencies" in the evidence given by the appellant and the EEA sponsor. The fact that Miss [S] attended to give evidence was a matter that supported his claim. She also considered the large volume of documentation addressed to the appellant and the EEA sponsor at the address given. She found that the fact that there was correspondence sent to that address did not assist her in assessing whether the marriage genuine. Having considered the evidence that might support the appellant's claim, she concluded it did not outweigh the inconsistencies arising from the evidence given by the witnesses [13].

3. The appellant appeals the First-tier Tribunal decision on the following grounds:

(i) The judge gave insufficient reasons for finding that the appellant's lack of knowledge of his wife's family was "inconsistent with that normally expected of a husband" and failed to conduct an adequate analysis of the evidence that was given to justify her finding.

(ii) The judge should not have attached any weight to the report of the visit to the appellant's address and failed to take into account relevant evidence, including the affidavit of Mr Khan, which was not challenged by the respondent at the hearing or other relevant evidence from the appellant's landlord.

Decision and reasons

4. This is a borderline decision because many of the judge's findings were open to her to make in light of the appellant's immigration history and having heard evidence from the appellant and his wife. However, I am concerned that some of the evidence that might have been relevant to a holistic assessment of the credibility of the witnesses was not considered adequately and may have been capable of making a material difference to the outcome of the appeal.

5. The judge listed the main points given in evidence at [6] of the decision and then listed a number of points that she identified as negative to the credibility assessment at [9]. However, in doing so she did not explain how or why she considered the appellant's lack of knowledge about his wife's family was inconsistent with that "normally expected of a husband" in light of the evidence given by his wife that they didn't talk about her father or brother due to "abuse issues during her childhood" [6.c-d].

6. Clearly the judge was concerned that some of the oral evidence about the furniture in the room where the couple claimed to live was not consistent [9.d-e]. However, there was other evidence produced from the appellant's landlord addressed to the appellant and his wife. Another resident at the property also testified to the couple living together at the address. The judge did not make specific reference to this evidence. Even if the reference to "correspondence relating to the tenancy" at [13] was a reference to the evidence from the landlord and Ms Hettiarachchi the judge needed to give adequate reasons for rejecting it. It was not sufficient to use the discrepancies already identified to reject this evidence, which should have formed part of holistic assessment of the credibility of the witnesses claim to be living together in a genuine marriage.

7. The judge found that the weight to be placed on the immigration report was lessened considerably by the fact that it was not supported by comprehensive witness statements from the officers concerned [11]. The report was in a standard format usually produced in such circumstances. Although the judge found that less weight could be placed on it she clearly placed some weight on it. As such, the evidence from the landlord and Ms Hettiarachchi was relevant to the credibility of the appellant's claim to live in Room 1 in the multiple occupancy property with his wife. The judge needed to consider evidence both for and against the appellant.

8. In her letter, Ms Hettiarachci said that she was at the property on the day of the visit and spoke to the immigration officers. She said that she was shown a photograph of the appellant and she told them that he and his wife lived at the address. Although she was not called to give oral evidence, the letter was accompanied by a copy of correspondence from HMRC addressed to Ms Hettiarachchi at [~] which did at least support her claim to live at the same address. In the circumstances, her evidence was relevant to a proper determination of the issue.

9. For the reasons given above, I conclude that the judge failed to give adequate consideration to evidence that might support the appellant's claim and failed to consider the evidence as part of a holistic assessment of the credibility of the witnesses.

10. Having found that the credibility findings involved the making of an error of law the nature and extent of judicial fact finding necessary to the decision to be remade is such that, having regard to the overriding objective, it is appropriate to remit the case to the First-tier Tribunal.

DECISION

The First-tier Tribunal decision involved the making of an error on a point of law

The appeal is remitted to the First-tier Tribunal for a fresh hearing

Signed  Date 14 May 2019
Upper Tribunal Judge Canavan