Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: EA/04915/2018

THE IMMIGRATION ACTS

Heard at Manchester	**Decision & Reasons Promulgated**
On 28 June 2019	**On 24 July 2019**

Before

DR H H STOREY
JUDGE OF THE UPPER TRIBUNAL

Between

SOHAIL AKHTAR
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr R Parkin of Counsel, instructed by Rayan Adams Solicitors
For the Respondent: Miss E Groves, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is national of Pakistan. On 20 January 2018 he applied for a residence card to confirm that he was a family member of his sponsor [ES], an EEA national from Poland. On 23 March 2018 the respondent refused his application because it considered his was a marriage of convenience. The appellant appealed. In a decision sent on 21 February 2019 Judge Handler of the First-tier Tribunal dismissed his appeal. The judge found that the evidence produced to show cohabitation was unsatisfactory, that the evidence relating to their having undergone an

Islamic marriage in May 2017 was unreliable and that sketchy photograph evidence was of little weight. The judge considered that there were serious inconsistencies in the couple's account of their relationship. The judge also found that the couple had given inconsistent evidence about the sponsor's health. The judge also found shortcomings in the bank statement evidence produced to the Tribunal.

2. In setting out his conclusions the judge correctly observed that the legal burden of proof rested throughout on the respondent to prove the appellant's marriage was one of convenience. At paras 61 – 65 the judge stated:

> "61. The evidence which supports the marriage not being a marriage of convenience is principally the photos, including those referred to in the interview transcripts, and the evidence of both the appellant and sponsor having given the Kingsway address to various third parties. I have considered this evidence and attached weight to it. I have also taken into account the submissions made by Mr Parkin. However, looked at in the round, all of that does not offer a satisfactory explanation in respect of the points raised below.
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> 62. The evidence indicates that the appellant and sponsor were known to each other but not that they were in a relationship. The following matters support the conclusion that the marriage is a marriage of convenience.
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> a. The lack of evidence from before September 2016. The appellant was arrested in August 2016 and at that time said he was single. None of the evidence that he has produced is shown to be from before the date of his arrest.
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> b. The lack of knowledge of the sponsor regarding the Islamic wedding.
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> c. The lack of knowledge of the appellant regarding the Islamic wedding certificate.
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> d. The lack of knowledge of the appellant of the sponsor's health condition.
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> e. The inconsistencies in the evidence regarding when the relationship started and when the appellant and sponsor moved in to the Kingsway address.
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> f. The inconsistencies in the appellant's evidence regarding why he said he was single when interviewed in detention in August 2016.
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> g. The other matters noted above which undermine the credibility of the appellant and the sponsor.
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> 63. The appellant's evidence on fundamental matters was inexplicably inconsistent. I found this to be very significant when considered together with the nature of the evidence supporting his case. In particular, the fact that he gave three different, unsatisfactory reasons for saying he was single when he was

> arrested in 2016 and his lack of knowledge about his wife's health condition provided cogent evidence that he was in a marriage of convenience undermined his credibility materially. Both of these aspects are straightforward factual matters where it would be expected that clear and consistent answers would be given. I would not expect an appellant to be fully consistent on all matters. However, I could not find a reasonable explanation for these inconsistencies. The evidence that supported his case was all from after his date of arrest.
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> 64. I conclude that the fact that neither the appellant nor the sponsor was able to provide satisfactory evidence on the above issues leads to the conclusions that they have not provided sufficient evidence to address satisfactorily the evidential burden on the appellant.
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> 65. Notwithstanding that, the legal burden remains on the respondent to set out above. The weight of the evidence falling against the appellant significantly outweighs that in his favour and demonstrates that on the balance of probabilities the marriage between the appellant and the sponsor is a marriage of convenience. It follows that I find that they are not and have not been in a durable relationship other than one of convenience."

3. The grounds of appeal have a narrow compass. They contend first of all that the judge was wrong to find that the evidence of an Islamic ceremony of marriage was inconsistent in showing dates for 24 August 2014 and 25 May 2017.

4. The parties did not address me on this matter, but I am prepared to accept that the judge overlooked that what he took to be the 24 August 2014 was in fact the Islamic year date 24-08-1438. However, even assuming that the Hijri date (Islamic year date) 24.08.1438 is therefore the English certificate date of 20 May 2017 (something which the grounds do not establish), I cannot see that the judge's assessment of the weight to be attached to this evidence would have been materially different. There were separate concerns listed by the judge with this evidence, namely that the couple were inconsistent as to its whereabouts or existence and that:

> "34. No photographs of the Islamic ceremony were submitted in evidence. The evidence provided that the sponsor at the interview in this respect does not support a conclusion that she was in a genuine relationship with the appellant because she is unclear on why they decided to have the Islamic ceremony when they did, and she was unable to identify those present at the ceremony on the photographs that she had on her phone. Those photographs were dated 22 July 2017 which is not the date that the ceremony was said to have taken place and she said that there was no certificate which was the opposite of what the appellant said. He said that there was a certificate and the sponsor had it."

In my judgment these concerns were sufficient on their own to justify the judge's analysis.

5. These are some points raised at para 8 of the written grounds, but as stated they do not identify any error of law on the part of the judge and Mr Parkin did not raise them before me. The only other properly formulated point left - and the only one ventilated by Mr Parkin before me - was that the judge had erred in making no mention when setting out the most significant evidence at para 61, of the evidence recorded at para 53 that the appellant and the sponsor had undergone fertility treatment together: The grounds contend that "[i]t was perverse and/or irrational for the court to simply state that this evidence added little" and that the respondent could not be said to have discharged the burden of proof in light of it.

6. I am not persuaded that this ground is made out. At para 61 the judge stated:

> "61. The evidence which supports the marriage not being a marriage of convenience is principally the photos, including those referred to in the interview transcripts, and the evidence of both the appellant and sponsor having given the Kingsway address to various third parties. I have considered this evidence and attached weight to it. I have also taken into account the submissions made by Mr Parkin. However, looked at in the round, all of that does not offer a satisfactory explanation in respect of the points raised below."

7. At para 53 the judge stated:

> "53. I note that the sponsor had been referred to a gynaecologist who she saw on 18 June 2018 because of concerns about not having conceived despite trying for two years. I have taken this into account but this evidence does not add significantly to the appellant's case."

8. The evidence relating to the sponsor's fertility treatment is contained at pp 101 – 105 of the bundle.

9. There are several reasons why I am not persuaded that the judge's treatment of the fertility treatment evidence is vitiated by legal error. First of all, the judge clearly took it into account and the observations made at para 53 also include a finding that he considered it of little weight. As Miss Groves rightly observed in submissions, weight is a matter for the judge.

10. Second, the grounds assert that this evidence establishes that "the appellant and the sponsor have undergone fertility treatment together". It does no such thing. It simply demonstrates that the sponsor had been referred to a gynaecologist due to concerns about not having conceived despite trying for 2 years. There is nothing stated in the evidence that

links to the appellant. Third, it was only evidence of a referral and significantly, there was a lack of any evidence of such treatment going ahead despite over 7 months having elapsed. Fourth, if either the sponsor or the appellant had had concerns about being unable to conceive, despite trying for two years, they both had ample opportunity to mention it in their interviews and statements. This is not a trivial matter because when asked why he had said he was "single" when questioned in 2016 (despite claiming to have cohabited with his partner since 1 May 2014), the appellant has said it was because he did not want to upset his partner because she had some medical problems at the time (para 47). The judge addressed this issue at paras 49 – 53 under the subheading "The sponsor's health" as follows:

> "49. My findings regarding the sponsor's health are as follows. The sponsor had a routine smear which identified abnormal cells in the cervix. She then had a colposcopy and a loop excision of the cervical transformation zone was performed 24 August 2016. The histology revealed no evidence of any abnormality. The sponsor's GP was informed of this by letter dated 10 October 2016. The sponsor did not have any symptoms other than some bleeding which was a normal part of the treatment that she had received.
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> 50. The sponsor told the interviewer that she was not working before November 2016 because she had uterus cancer. The AB says in the index 'Sponsor Cancer Diagnosed Proofs' on pages 19 – 22. The evidence is in fact conclusive that the sponsor did not have cancer as noted in my findings above and the sponsor confirmed this at the hearing. Having uterus cancer is very serious and may involve extensive and difficult treatment. It is quite different to having some abnormal cells investigated after a routine smear followed by a loop excision. I found that the sponsor's exaggerated evidence regarding her health condition undermined her credibility.
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> 51. The appellant was vague regarding the diagnosis, symptoms and treatment that his wife had in respect of this health issue. The appellant told me that when the sponsor was ill, he had to do everything around the house. There is no reason why this would have been necessary. When asked, the sponsor said that her symptoms were some bleeding and that the help that the appellant had given her was to support her emotionally.
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> 52. I find that the evidence given by the appellant and the sponsor regarding the above health issue is inconsistent. I find that inconsistency is significant because if his partner had cancer, it is reasonable to expect that the appellant would know what the diagnosis was, when it was made, what the symptoms were and what the treatment was. If his partner has some abnormal cells identified in a routine smear followed by a loop exision which revealed no evidence of any abnormality, he could reasonably be expected to explain that. There would be no reason why in those circumstances his wife would need him to perform all household tasks because of her health condition.

> 53. I note that the sponsor had been referred to a gynaecologist who she saw on 18 June 2018 because of concerns about not having conceived despite trying for two years. I have taken this into account but this evidence does not add significantly to the appellant's case."

11. If the appellant was correct that the state of the sponsor's health was a major problem, it makes no sense that neither he nor she would have failed to link it to her concerns about not conceiving. Either she or both would have said that she or they were trying for children, but were facing problems in her conceiving. She mentioned only that "we want to make family" – nothing about facing problems conceiving. When asked if she had any medical problems she said no (apart from "a burn problem") and later said that she had had surgery for uterus cancer but was "fine now". He only mentioned her cancer problems.

12. For the above reasons I reject the appellant's principal ground.

13. The judge did not materially err in law.

14. Accordingly, the judge's decision must stand.

No anonymity direction is made.

Signed Date: 19 July 2019

Dr H H Storey