



**Upper Tribunal**

**(Immigration and Asylum Chamber) Appeal Number: EA/00542/2019 (P)**

**THE IMMIGRATION ACTS**

**Decided under rule 34 (P)  
On 14 August 2020**

**Decision & Reasons Promulgated  
On 19 August 2020**

**Before**

**UPPER TRIBUNAL JUDGE KEKIĆ**

**Between**

**RANA UMER RAZA**

**(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**DECISION AND REASONS**

**Representation (by way of written submissions)**

**For the appellant: Mr M Iqbal of Counsel instructed by NR Legal Solicitors**

**For the respondent: Mr S Kotas, Senior Home Office Presenting Officer**

## Background

1. This appeal comes before me following the grant of permission to appeal by First-tier Tribunal Judge Nightingale on 14 January 2020 against the determination of First-tier Tribunal Judge T Lawrence, promulgated on 22 April 2020 following a hearing at Taylor House on 13 December 2019.
2. The appellant is a Pakistani national born on 14 November 1988. He entered the UK as a student and subsequently claimed asylum as a gay man before marrying a Romanian national shortly thereafter in an Islamic ceremony and making an application for a residence card. He and his partner were interviewed and the application was refused on 24 January 2019 because the respondent concluded that the appellant had entered into a sham marriage.
3. The appeal came before First-tier Tribunal Judge Lawrence. Following oral evidence from the appellant, the sponsor and a family friend and submissions from the parties, the judge dismissed the appeal.

## Covid-19 crisis

4. Ordinarily, the appeal would have been listed for hearing following the grant of permission to appeal but due to the Covid-19 pandemic and need to take precautions against its spread, this did not happen and directions were sent to the parties on 9 June 2020. They were asked to present any objections to the matter being dealt with on the papers and to make any further submissions on the error of law issue within certain time limits.
5. The Tribunal has received written submissions from both parties. Both parties have agreed to the matter being considered on the papers and in the current circumstances I agree that that course of action is appropriate.
6. In doing so I have regard to the Tribunal Procedure (Upper Tribunal) Rules 2008 (the UT Rules), the judgment of Osborn v The Parole Board [2013] UKSC 61, the Presidential Guidance Note No 1 2020: Arrangements during the Covid-19 pandemic (PGN) and the Senior President's Pilot Practice Direction (PPD). I have regard to the overriding objective which is defined in rule 2 of the Tribunal Procedure (Upper Tribunal) Rules 2008 as being "to enable the Upper Tribunal to deal with cases fairly and justly". To this end I have considered that dealing with a case fairly and justly includes: dealing with it in ways that are proportionate to the importance of the case, the complexity of the issues, etc; avoiding unnecessary formality and seeking flexibility in the proceedings; ensuring, so far as practicable, that the parties are able to participate fully in the proceedings; using

any special expertise of the Upper Tribunal effectively; and avoiding delay, so far as compatible with proper consideration of the issues (Rule 2(2) UT rules and PGN:5).

7. I take into account that a full account of the facts are set out in the papers, that the arguments for and against the appellant have been clearly set out and that the issues to be decided are straightforward and have been fully addressed in the submissions made. There are no matters arising from the papers which would require clarification and so an oral hearing would not be needed for that purpose. I have regard to the importance of the matter to the appellant and consider that a speedy determination of this matter is in his best interests. I am satisfied that I am able to fairly and justly deal with this matter on the papers before me and I now proceed to do so.

### Submissions

8. The respondent's submissions are dated 15 June 2020. They were made in compliance with the directions of the Upper Tribunal.
9. Mr Kotas notes that the grounds put forward by the appellant are a rationality challenge and he relies on the guidance in VV (grounds of appeal) [2016] UKUT 53 (IAC) (at paragraphs 23 and 24). He submits that applying the guidance given, the suggestion that there was a lack of reasoning in the determination is unarguable. He submits that the judge dealt with all matters that went both in favour and against the appellant and, having considered in detail the evidence, he properly decided that on balance the marriage was one of convenience. He submits that what the judge did was to attach significant weight to the fact that the appellant had been prepared to lie to the immigration authorities by making a false asylum claim on the basis of his sexuality and that his spouse showed no apparent interest in finding out the reason why her husband feared returning to his home country. He submits that the judge was entitled to place substantial weight on these matters and that the argument that the appellant should succeed if there were numerically more findings in favour than against him is misconceived. It is submitted that some evidence will be more probative than other evidence and that the exceptionally high threshold for a rationality challenge had not been met.
10. The appellant's submissions prepared by Counsel are dated 24 July 2020. An extension of time is sought on the basis that Judge Nightingale's permission decision had only been received two weeks earlier.
11. In his written submissions, Mr Iqbal submits that the only ground of appeal is that on the available evidence it was not open to the judge to reach the findings he did. The submissions then expand on the grounds and maintain that trivial inconsistencies are a common

feature in almost every genuine couple's replies and that as long as there is consistency in most of their answers, then the inconsistencies can safely be ignored. It is pointed out that the appellant and his wife were asked questions on over 25 different topics and that they gave consistent answers on at least 23. Additionally, there was evidence that they were registered for IVF treatment and that they shared a joint bank account. It is pointed out that three of the criticisms relied on by the respondent in her decision letter were not upheld by the judge. It is submitted that there were 27 or 28 positive findings and on the other hand there were only two negative findings against the appellant and that, therefore, it was not open to the judge to find as he did. It is submitted that the judge was required to give reasons as to why the two issues relied on outweighed the consistent evidence. It is maintained that the appellant's case is not restricted to a rationality challenge but is about applying too high a threshold, failing to appreciate the cumulative weight of consistent evidence, failing to appreciate that the appellant's evidence is not required to be 100% consistent with his wife's evidence and a failure to give reasons as to why inconsistent evidence outweighed the consistent evidence. It is submitted that the respondent completely misunderstood the appellant's case. Questions are then put as to why more weight was given to inconsistent answers than two consistent ones. The Tribunal is asked to set aside the decision.

### The legal framework

12. The judge properly took into account the Immigration (European Economic Area) Regulations 2016 and the appropriate case law at paragraphs 37-38 of his determination. Regulation 2(1) provides that the interpretation of a "marriage of convenience" includes a marriage entered into for the purpose of using those Regulations, or any other right conferred by the EU treaties, as a means to circumvent: (a) immigration rules applying to non-EEA nationals (such as any applicable requirement under the 1971 Act to have leave to enter or remain in the United Kingdom); or (b) any other criteria that the party to the marriage of convenience would otherwise have to meet in order to enjoy a right to reside under the Regulations or the EU treaties. The judge acknowledged that the evidential burden was on the respondent to show that the marriage is one of convenience, on a balance of probabilities: Sadovska [2017] UKSC 54.

### Discussion and Conclusions

13. I have considered all the evidence, the determination of the First-tier Tribunal Judge, the grounds for permission and the submissions made by both parties.
14. I grant the appellant's request for an extension of time and admit his submissions. The respondent is not disadvantaged by the delay and the submissions assist the Tribunal in its decision.

15. This is a case where the judge's reasoning is criticised as inadequate essentially because he reached the adverse conclusion that the appellant had entered into a sham marriage to a Romanian national on the basis of a limited number of negative findings as opposed to several more positive findings.
16. Contrary to what the appellant's grounds argue, the simple issue of numbers on one side of the scale as opposed to those on the other cannot determine the outcome of an appeal and to put forward such a simplistic argument is unhelpful. As the respondent properly points out, there will be matters that carry more weight so that even one issue may outweigh several on the positive side of the scale depending on the nature of the issue and the weight given to it by the judge.
17. There can be no possible argument in this case that the appellant did not know why the judge made the findings he did or reached the conclusion he reached. Nor can it be reasonably argued that the judge's decision making was flawed or that there was an inadequacy of reasoning. The judge methodically goes through the evidence and clearly sets out the weight he ascribes to various factors. So, for example, the consistent evidence summarised by Counsel in his submissions and in the grounds and the evidence of cohabitation is given a particular weight (at 40 and 43), photographs and the untested evidence of a friend is given minimal weight (at 41 and 42), inconsistent evidence on whether or not the sponsor's family members were invited to the wedding is considered as going neither one way or another (at 44) and the sponsor's lack of knowledge as to the appellant's studies is given a low level of weight (at 45). The sponsor's lack of interest in whether the appellant was attending his asylum interview appointments was given medium importance (at 46). The judge, however, gave high importance and accordingly attached much greater weight to the sponsor's ignorance as to why the appellant feared returning to Pakistan and her lack of interest in his claim which she claimed she maintained she considered to be genuine (at 47). He found that this detracted from the claim that they enjoyed a genuine relationship.
18. The judge also considered the appellant's shifting evidence on the asylum claim. His evidence was contradictory and was found to be lacking in credibility (at 49). The judge noted the appellant's attempt to shift the blame for making a bogus asylum claim to his representatives and also took account of the fact that he had been willing to seek to deceive the immigration authorities by pursuing a claim to be a gay man which he subsequently admitted was a "*mistake*" (ibid). having assessed all the matters raised and having ascribed weight to the various factors and evidence, the judge concluded that the respondent had shown that the marriage was one of convenience (at 50). That decision was reached after the evidence was carefully considered and assessed and was a conclusion the

judge was entitled to reach. It cannot be said that "*there is a gap in the reasoning*" (VV op cit at 24) or that the "*decision is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it*" (Council of Civil Service Unions v Minister for the Civil Service [1984] UKHL 9; see respondent's submissions at 8). Accordingly, it was open to the judge to dismiss the appeal and his determination contains no errors of law.

**Decision**

19. The decision of the First-tier Tribunal does not contain an error of law and it is upheld. The appeal is dismissed.

**Anonymity**

20. No request for an anonymity order has been made at any stage of these proceedings and I see no reason to make one.

Signed

R. Kekić

Upper Tribunal Judge

Date: 14 August 2020