Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: EA/01102/2019 (P)

THE IMMIGRATION ACTS

Decided under rule 34
On 21st July 2020

Decision & Reasons Promulgated
On 3rd August 2020

Before

UPPER TRIBUNAL JUDGE JACKSON

Between

RAVINDER SINGH
(ANONYMITY DIRECTION NOT MADE)

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DECISION AND REASONS

1. Following the adjournment of this hearing listed for 27 March 2020 due to the pandemic, directions were sent to the parties on 24 April 2020 indicating a provisional view that in light of the need to take precautions against the spread of Covid-19 and the overriding objective, it would be appropriate in this case to determine the issue of whether the First-tier Tribunal's decision involved the making of an error of law and if so whether the decision should be set aside.

2. Written submissions in accordance with those directions were received on behalf of the Appellant on 7 May 2020 and there was no objection on his behalf to the issues being determined without a hearing. A rule 24 response was received from the Respondent on 8 July 2020, making written submissions as to the issues in the appeal and requesting an oral hearing. There were however no reasons as to why an oral hearing was

requested or why it was not, in all of the circumstances, appropriate or in the interests of justice to deal with the issues without a hearing. In circumstances where both parties had made written submissions on the issues and in accordance with the overriding objective, it is in the interests of justice to proceed to determine this appeal on the papers in light of the written submissions and full appeal file.

3. The Appellant appeals with permission against the decision of First-tier Tribunal Judge Boyes promulgated on 6 September 2019, in which the Appellant's appeal against the decision to refuse his application for an EEA Residence Card as the spouse of an EEA national exercising treaty rights in the United Kingdom dated 25 February 2019 was dismissed.

4. The Appellant is a national of India, born on 20 January 1987, who first entered the United Kingdom with valid leave as a Tier 4 student in 2009 and again in the same capacity in 2012. He has since remained in the United Kingdom without leave.

5. The Appellant applied for an EEA Residence Card which was refused on 24 April 2015 on the basis that he had entered in to a marriage of convenience and an appeal against that refusal was dismissed by the First-tier Tribunal, Judge James, in a decision promulgated on 15 September 2016. The Appellant subsequently made three further applications for an EEA Residence Card, all of which were refused and certified the last one. A further application was made on 14 January 2019, the refusal of which is the subject of this appeal.

6. The Respondent refused the application the basis that the Appellant had entered into a marriage of convenience with an EEA national on 2 July 2014. The previous refusals, following a marriage interview on 24 March 2015 were relied upon, as were the findings of First-tier Tribunal Judge James in 2016. The further evidence submitted with the application which may (or may not) show residence with the Sponsor at the time of application were not accepted as relevant to the issue of whether there was a marriage of convenience, nor did the documents address the concerns of the Tribunal in 2016.

7. Judge Boyes dismissed the appeal in a decision promulgated on 6 September 2019 on all grounds. The First-tier Tribunal began with a reference to the previous decision of First-tier Tribunal Judge James and the conclusion therein that the Appellant had entered in to a marriage of convenience and then identifies the new material relied upon by the Appellant which was not before the previous Tribunal. This included notebook entries from Immigration Officers who attended the Appellant's home and a record of an interview conducted with both the Appellant and his spouse on their wedding day. There was further new evidence which the Appellant did not continue to place reliance on before the First-tier Tribunal, including a tenancy agreement, bank statement and letters of support from friends.

8. The First-tier Tribunal identified that the previous Tribunal decision was the starting point, in accordance with the principles in *Devaseelan*, with a need to consider the new material to see if it may cause the findings made previously to be looked at again. The decision then sets out findings on the new evidence and concludes that there is no reason to depart from the findings of First-tier Tribunal Judge James and the appeal was therefore dismissed.

The appeal

9. The Appellant appeals on three grounds as follows. First, that the First-tier Tribunal materially erred in law in misdirecting himself in paragraphs 24, 25, 26 and 27 of the decision concluding that the Respondent only visited the Appellant's property once, whereas the evidence shows two visits to the property and additional notepad entry for the interview on 2 July 2014 (the date of the Appellant's marriage) in which an Immigration Officer wrote that the relationship was deemed genuine. The First-tier Tribunal erred as to the number of visits and failed to address the evidence from 2 July 2014. Secondly, that the First-tier Tribunal materially erred in law in failing to consider the evidence from the interview on 2 July 2014, in which the Respondent accepted that the relationship was genuine and the marriage proceeded This evidence was not before the previous Tribunal and was not taken into account in the decision under appeal. Thirdly, that the First-tier Tribunal materially erred in law in recording that the Appellant did not call any further evidence in support of his appeal in circumstances where the Appellant, his spouse and his spouse's daughter attended court but not called for cross-examination on their written statements.

10. The written submissions received on behalf of the Appellant continue to rely on the written grounds of appeal and the grant of permission. In addition, in relation to the first ground it is added that the failure of the First-tier Tribunal to realise there were two visits to the Appellant's home demonstrates that there was a lack of anxious scrutiny of the evidence which undermines the findings overall. In relation to the second ground of appeal, it is emphasised that Immigration Officers interviewed the Appellant and his spouse for three hours on 2 July 2014 before allowing their marriage to proceed; which is contemporaneous evidence of assessment of the relationship at the relevant date for the purposes of considering whether there was a marriage of convenience. This evidence was simply not taken into account by the First-tier Tribunal, in terms of the substance of the interview record or the conclusion reached that the relationship was genuine.

11. The Respondent, in her written submissions, opposes the appeal and made the following submissions. First, that whether or not there were one or two visits to the Appellant's property in 2014 or 2015 is immaterial to the consideration of the evidence by First-tier Tribunal Judge James in 2016, which is correctly identified as the starting point in considering the evidence. Secondly, it was at the Appellant's request that the First-tier

Tribunal focused on the new evidence in the notebooks and distanced himself from the other materials submitted with his application. Thirdly, the Respondent submits that the First-tier Tribunal considered this new evidence with care and assessed what it could show, before concluding that the notebook evidence could not displace the succinct findings from 2016. Finally, the decision expressly states that all of the evidence provided in the Appellant's bundle has been considered, including the matters which the Appellant's solicitors drew attention to and the failure to specifically record the Appellant's spouse's evidence, or her daughter's is not material. It is noted that the Appellant's grounds of appeal do not specify what evidence could have made a difference to the outcome of the appeal and it appears her evidence did not in any event go beyond what she had previously said in 2016.

Findings and reasons

12. The first ground of appeal primarily concerns the number of visits made to the Appellant's property by Immigration Officers, but also refers to the evidence of the interview on 2 July 2014, which I deal with as part of ground two which is focused on this aspect of the evidence and decision.

13. The First-tier Tribunal's reasoning in relation to the number of visits to the Appellant's home is in paragraph 24 as follows:

> *"With regards to the officer's notebooks I'm satisfied that the Appellant is mistaken with regards to the number of times the notebooks record visits. The notebooks as disclosed do not show that there were two separate visits on two separate occasions at which the appellant was located at the same address together with his EEA national. It is, I am satisfied, more than one officer attending on the same occasion and each writing their own note with regards to what they, the particular officer, did on attendance. I am supported in this view by the fact that the officers' details are recorded in each other's notebooks and the timings of arrival at the premises, of entry to the premises and of departing from the premises are also close so as to be obvious that it is the same visit."*

14. The First-tier Tribunal finds that this evidence shows that on one date in 2014, the appellant, his spouse and her daughter were together in the same house in the early morning. At it's highest, this is not accepted as in any way undermining the comprehensive and complete assessment of the entirety of the Appellant's claim as put to the Tribunal in 2016. That conclusion is unassailable when one considers the detailed reasons given by First-tier Tribunal Judge James in 2016 and would inevitably be the same even if there were two such distinct visits confirming the Appellant and his spouse were at the same property. However, I consider whether in any event there was any factual error in the findings made on such visits.

15. The Appellant has not, in the grounds of appeal or otherwise, specified the two separate dates upon which he states there was a visit to his home

nor the evidence supporting himself, his spouse and her daughter being present on both occasions. In these circumstances, I have considered the notebook evidence for myself and can discern that there are three separate entries from different officers on 14 May 2015; none of which refer to the Appellant, the Sponsor or her daughter and identify the target of the visit as Amit Kumar; and four separate entries from different officers on 30 May 2015; one of which identifies the Appellant and Sponsor by name, one of which identifies the Sponsor and her daughter by name with reference to the Sponsor's spouse (not named) and the other two do not refer at all to the Appellant, the Sponsor or her daughter. Again, the target of this visit is identified as Amit Kumar. The visits were all to the same residential address.

16. On this basis, the First-tier Tribunal was entitled to conclude in paragraph 24 that there was only evidence of one single visit with the Appellant, Sponsor and her daughter present, as confirmed by two different officers in attendance on the same date (even if there were two visits to the same property) and there was no material misdirection or mistake of fact as claimed in the first ground of appeal. The First-tier Tribunal's findings were wholly consistent with the evidence before it and do not in any way support the assertion that there was a lack of anxious scrutiny of the evidence. If anything, the findings, which refer to the detail of the notebook entries in terms of times of visits and names of officers show thorough and detailed assessment of that evidence. For these reasons, there is no error of law on the first ground of appeal.

17. The second ground of appeal concerns the First-tier Tribunal's assessment of the notebook evidence from the officers interviewing the Appellant and his spouse on 2 July 2014, the day of their marriage. The First-tier Tribunal's findings on this were as follows:

> *"29. In addition, the appellant relies on the opinion of an officer who performed an interview with the appellant/spouse. The opinion is said to be that the marriage was not one of convenience. The ultimate decision of the Home Office in respect of that interview and claim that it was a marriage of convenience and such a finding was upheld by Judge James. Taking the evidence as provided to Judge James and adding that aspect in to the equation I'm satisfied that it does not disrupt or undermine the findings of Judge James in any way. The opinion of an officer, albeit important no doubt, is not binding upon the decision-maker, the Secretary of State or a Judge.*
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> *30. The fact that there is an opinion expressed is surprising and perhaps unwise however taken together with all of the other evidence it does not enable me to depart from the findings of Judge James. I cannot depart from the findings of Judge James in relation to this particular evidence or indeed the evidence of the notebooks as the evidences of such is in reality of little*

consequence and of little weight in the grand scheme of the case that it does not disrupt the findings made."

18. It is clear from the decision of the First-tier Tribunal, which expressly refers to the evidence of these interviews and specifically refers to the Appellant's reliance on an officer's view that this was not a marriage of convenience; that this evidence was taken into account and assessed together with all of the other evidence and previous findings in 2016. It can not be said that the conclusion itself was not taken into account, it was, it was just not sufficient to outweigh the other evidence or depart from the findings previously made on much broader and more detailed evidence. Further, although not expressly stated by the First-tier Tribunal, there is also a difference between the Appellant's reliance on the notebook showing that it was concluded that this was not a marriage of convenience and the actual words in the notebook that 'relationship deemed genuine' which is not actually the same thing or determinative of whether the marriage itself was one of convenience.

19. Whilst there is no express reference by the First-tier Tribunal to the substance of the interviews with the Appellant and the Sponsor on 2 July 2014, the Appellant does not identify what, if anything, in the substance of the notebook records assists him claim any further beyond the conclusion about his relationship being genuine. Having considered that evidence for myself, there is nothing clearly identifiable that assists and if anything, there are inconsistencies between the answers given by the Appellant and the Sponsor, for example as to the cost of the rings and how much money was given for them. It is also of note that although it is said that these interviews lasted three hours, they are in substance much shorter and less detailed than the further marriage interview conducted by the Respondent (a record of which was available to the previous Tribunal and the most recent one); which was considered by the Tribunal in 2016 together with the oral evidence of the Appellant and Sponsor. There is nothing to indicate that the First-tier Tribunal failed to have regard to the substance of the interview on 2 July 2014 even if not expressly referred to, but in any event there is nothing in that evidence that could have affected the First-tier Tribunal's conclusions specifically on that point or overall. The First-tier Tribunal simply dealt expressly with the high point of that notebook evidence and gave reasons for rejecting it when considering the evidence as a whole. For these reasons there is no error of law on the second ground of appeal.

20. The third ground of appeal concerns the First-tier Tribunal's assessment of the evidence of the Sponsor and her daughter; which is not expressly referred to in the decision. It is said that the statement in paragraph 32 that the Appellant did not call any further evidence or information in support of his appeal is not correct or fair given that the Appellant, Sponsor and her daughter all attended court but were not cross-examined. There is however nothing of substance in this criticism given that in paragraph 33 the First-tier Tribunal confirms that it is has considered all of the evidence in the Appellant's bundle and that nothing therein justifies a

departure from the previous Tribunal finding, the new material being inconsequential and immaterial. The evidence in the bundle included the written statements of the Appellant, Sponsor and her daughter and there is nothing to suggest that these have not been considered or taken into account.

21. Again in relation to this ground of appeal the Appellant has failed to specify what evidence in particular was relied on before the First-tier Tribunal and what is relevant and material to the outcome of the appeal to be considered now. Having considered the written statements of the Sponsor and her daughter it is notable that they are relatively brief, do not refer to the notebook evidence heavily relied upon, do not respond in any way to the detailed adverse findings made by First-tier Tribunal Judge James in 2016 and do not raise any new matters or evidence which was not available to the previous Tribunal. On this basis, there is nothing in that evidence which could have had any material bearing on the outcome of this appeal and in any event, it was strictly correct that there was no further oral evidence and nothing to indicate that the written evidence was not properly taken into account. For these reasons there is no error of law on the final ground of appeal.

Notice of Decision

The making of the decision of the First-tier Tribunal did not involve the making of a material error of law. As such it is not necessary to set aside the decision.

The decision to dismiss the appeal is therefore confirmed.

No anonymity direction is made.

Signed G Jackson Date 21st July 2020

Upper Tribunal Judge Jackson