



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: EA/04576/2019 (V)

THE IMMIGRATION ACTS

Heard at Field House
On 1 March 2021

Decision & Reasons Promulgated
On 7 April 2021

Before

UPPER TRIBUNAL JUDGE SHERIDAN

Between

HAFIZ TALAT RASHID
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation

For the Appellant: Mr Bukhari, Bukhari Chambers Solicitors

For the Respondent: Mr Lindsay, Senior Home Office Presenting Officer

This has been a remote hearing to which both parties have consented. The form of remote hearing was video by Skype (V). A face to face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. I did not experience any difficulties, and neither party expressed any concern, with the process.

DECISION AND REASONS

1. The appellant is appealing against a decision of Judge of the First-tier Tribunal Chana (“the judge”) promulgated on 24 January 2020 dismissing his appeal against the decision of the respondent dated 15 August 2019 refusing to issue him with a residence card as an extended family member of an EEA national under the Immigration (EEA) Regulations 2016 (“the 2016 Regulations”).
2. The issue in contention before the judge was whether the appellant entered into a durable partnership of convenience with his partner (“the sponsor”).

Decision of the First-tier Tribunal

3. The judge found that although the appellant and sponsor have been living together for several years (and the sponsor genuinely believes she is in a durable relationship) there is not a durable relationship because the appellant is using the sponsor to gain immigration status. At paragraph 65 the judge described the appellant as having the “intention to dupe” the sponsor.
4. The reasons given by the judge for reaching this conclusion are as follows:
 - a. The appellant previously entered into a marriage of convenience with a (different) EEA national (paragraphs 54-55).
 - b. The appellant’s credibility was damaged by providing inconsistent evidence about when he divorced the EEA national with whom he entered into a marriage of convenience (paragraph 56).
 - c. The sponsor and appellant gave inconsistent evidence about when they began living together (paragraph 58).
 - d. The appellant divorced his former wife when his application to the respondent was refused and “started looking for another EEA national who could be his sponsor” (paragraph 59).
 - e. The appellant did not “naturally” meet the sponsor but rather “immediately joined a dating website to meet another EEA national on the Internet, having previously met his French national wife on the Internet and marrying her on the telephone” (paragraph 60).
 - f. The sponsor’s evidence that she went on a dating website to meet people who can speak English was not credible because her evidence was that before she met the appellant she had no intention of coming to the UK and it is not credible that she would go on a dating website to learn English and not to meet a man (paragraph 61).

- g. The appellant did not tell the sponsor that he had been suspected by the respondent of entering into a sham marriage (paragraph 63).
- h. The evidence of the witnesses (that they believe the appellant and sponsor are in a durable relationship) is “consistent with the appellant’s intention to dupe [the sponsor] and the respondent into believing he is in a durable relationship with [the sponsor] (paragraph 65).

5. At paragraph 66 the judge stated:

If the appellant and [the sponsor] are in a durable relationship, there is no credible evidence before me as to why they cannot return to Pakistan and continue their relationship in that country. The appellant and [the sponsor] claim that both sets of their respective parents and families, have no objection to their relationship and therefore [the sponsor] can relocate to Pakistan with the appellant to continue their family life, if the appellant genuinely believes he is in a durable relationship with [the sponsor], which I find he is not.

Grounds of appeal and submissions

- 6. The grounds make several discrete criticisms of the decision under the overarching contention that the decision was irrational. The various points made include:
 - a. The judge sought to establish the intention of the appellant and sponsor separately rather than look at their circumstances and the evidence of the relationship together.
 - b. The judge’s reasoning revolves around the appellant’s previous marriage and her belief that it was a marriage of convenience.
 - c. The judge did not take account of the fact that the reference to the appellant and sponsor starting to live together in November 2015 in the application form was a mistake by the previous representatives of the appellant.
 - d. The judge “seems to be very old-fashioned” in rejecting the idea that the appellant and sponsor would want only a friendship on the “Badoo” website, where they met.
 - e. The judge stated that the appellant began looking for another EEA national after his application as a spouse was refused on 11 January 2015, but the appellant met the sponsor before then, in June 2014.
 - f. The judge erred by finding that it was not “natural” to meet the woman online, as opposed to in-person in the UK.

- g. The judge failed to give any reasons for rejecting the evidence of the witnesses.
7. A further argument in the grounds is that the finding at paragraph 66 that the appellant and sponsor could live in Pakistan is irrelevant.
 8. At the hearing, Mr Bukhari argued that the judge's decision was not open to her because the evidence given by the sponsor, appellant and witnesses all pointed in one direction, which is that the appellant and sponsor, who have been cohabiting since 2016, are, and have been, in a genuine relationship.
 9. Mr Bukhari submitted that the judge appears to have not liked the fact that the appellant and sponsor met on the internet. He stated that, at the start of the hearing, the judge stated: is this the appeal of the guy who looks for EEA wives on the internet? He maintained that the judge, having taken an initial view that the relationship was a sham, improperly discounted evidence that showed the contrary to be true. Although these points were raised, it was not argued that the decision was procedurally unfair: Mr Bukhari's argument was that the decision was irrational, not that it was procedurally unfair.
 10. Mr Lindsay submitted that this is a rationality/perversity challenge and that the high threshold in such cases has not been met. He argued that the judge gave adequate reasons for finding the appellant lacked credibility, and it was not sufficient for the appellant to challenge some of the findings when other significant credibility findings remain unchallenged and are sufficient to support the conclusion the judge reached.

Analysis

11. This appeal concerns whether the appellant entered into a durable partnership of convenience, as defined in regulation 2 of the 2016 Regulations, which provides:
 - “durable partner” does not include –
 - (a) a party to a durable partnership of convenience; or
 - (b) the durable partner (“D”) of a person (“P”) where a spouse, civil partner or durable partner of D or P is already present in the United Kingdom and where that marriage, civil partnership or durable partnership is subsisting; “durable partnership of convenience” includes a durable partnership entered into for the purpose of using these 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 durable partnership of convenience would otherwise have to meet in order to enjoy a right to reside under these Regulations or the EU Treaties;

12. In my view, the judge was entitled, based on the evidence before her, to find that the appellant was a party to a “durable partnership of convenience”, for the following reasons:

- a. Firstly, the appellant previously entered into a marriage of convenience. The judge assessed the marriage, and the respondent’s reasons for finding it to be one of convenience, in paragraphs 53 – 56. Although the appellant does not concede that his previous marriage was one of convenience, he does not challenge the analysis, or findings, in paragraphs 53-56 concerning that marriage. The judge was entitled to find that the previous marriage of convenience undermined his credibility.
- b. Secondly, as found at paragraph 63, the appellant never told his sponsor that he was previously found by the respondent to have entered into a marriage of convenience. The judge was entitled to find this damaging to his credibility.
- c. Thirdly, the judge was entitled to have regard to an inconsistency in dates between the application form and witness evidence. It was a matter for the judge, who had the benefit of hearing the oral evidence, to decide whether or not the discrepancy was significant.
- d. Fourthly, the appellant joined a dating site and met his partner shortly after his application as a spouse was refused. The judge did not err in finding this to be the case because the appellant’s first application as a spouse was refused on 17 February 2014 and he met his partner over the internet in June 2014. The judge was entitled to infer from this that the appellant sought a relationship with another EEA national when he was unable to obtain a residence card as the spouse of his previous wife.
- e. Fifthly, it was not irrational to find that the evidence of the witnesses added little because they could do little more than confirm cohabitation.

13. This is a case in which there was evidence pointing in both directions. On the one hand, the appellant and sponsor had been living together for several years and two of their friends gave evidence to support the claim that the relationship is genuine. On the other hand, there were several factors, as summarised above in paragraph 12, which could rationally lead to the conclusion that this was a durable partnership of convenience. I therefore reject the submission that the decision was irrational. I am fortified in my

conclusion by having regard to recent Court of Appeal authorities, including in particular *Lowe v The Secretary of State for the Home Department* [2021] EWCA Civ 62, which emphasise the caution that must be exercised before interfering with evaluative decisions of first instance judges.

14. It is unclear why, in paragraph 66, the judge discussed relocation to Pakistan when this was irrelevant to the issues before her. However, as paragraph 66 has no bearing on the durable partnership issue, it does not undermine the decision.

Notice of Decision

15. The appeal is dismissed.
16. The grounds of appeal do not identify a material error of law. The decision stands.

Signed

D. Sheridan

Upper Tribunal Judge Sheridan

Dated: 1 April 2021