



**Upper Tribunal
(Immigration and Asylum Chamber)**
IA/27339/2013

Appeal Numbers:

THE IMMIGRATION ACTS

Heard at Field House

Determination

On 4th June 2014

Promulgated

On 9th June 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE FRANCES

Between:

SHERAZ AHMAD

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: In person, no representation

For the Respondent: Mr P Nath, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

The Appellant

1. The Appellant is a citizen Pakistan born on 22nd August 1986. He appeals against the determination of the First-tier Tribunal dated 13th February 2014 dismissing his appeal against the Respondent's decision of 15th June 2013 refusing a residence card as confirmation of a right of residence under Regulation 7 and 2 of the Immigration (EEA) Regulations 2006.

2. Permission to appeal was granted by Upper Tribunal Judge Allen on 24th April 2014 on the ground that the determination was insufficiently reasoned. The detailed explanation given by the Appellant in relation to the discrepancies between him and his wife at interview, was scarcely mentioned in the determination and the minimal examples given by the Judge of such discrepancies were not such as to enable the reader of the determination to be satisfied as to the reasons for the decision.
3. At the hearing before me, the Appellant was unrepresented. He relied on written grounds of appeal dated 1st June 2014 and submitted that an interpreter was requested for his wife one month before interview; the request was made by telephone. No interpreter was available on the day and since the Appellant and his wife had travelled from London the day before, they decided to go ahead without one. The Appellant's wife did not understand the interviewer's Liverpool accent and she was too shy to say that she did not understand. The interviewer was not friendly and was impolite at times. He was not very clear and he hurried his questions. At the conclusion of the interview, the Appellant's representative stated that there had been some misunderstanding. Therefore, a complaint was made immediately after the interview.
4. The Appellant submitted that he and his wife were questioned about what they did at the weekend. His wife shared a slice of pizza with him, but the interviewer misinterpreted the answer; recording that the Appellant's wife had eaten at work and the Appellant had stated they had dinner together. The interviewer asked many probing questions which were not recorded in the interview record, had he recorded those questions, the Judge would have been able to get an accurate sense of the answers. The interviewer followed the Appellant's wife to the toilet; she was shocked and felt intimidated. On her return, his wife got confused when asked about the wedding arrangements. This misunderstanding happened because no interpreter was present.
5. The Appellant submitted that the Judge ignored the witness statements. He did not ask any questions and he did not give the Appellant the chance to explain the discrepancies. The Judge misunderstood the case and based his decision on two discrepant answers, ignoring the other consistent answers. The Appellant and his wife are unable to visit family in Pakistan or Lithuanian because of the Appellant's unresolved immigration status.
6. Mr Nath submitted that the Judge had dealt with the issues raised by the Appellant at paragraphs 25 and 26 of the determination. The Appellant and his wife had signed the declaration at the conclusion of the interview that they had understood the questions and they had been given the opportunity to provide further information. The representative's comments at the end of the interview did not amount to a complaint and no attempt was made to stop the interview. The

Judge made his findings based on this interview; the points he relied on were significant discrepancies that went to the core of the Appellant's credibility.

7. The Appellant was represented at the hearing and he should have dealt with the confusion about the wedding arrangements and the wedding day. The complaints about the interview were made in the Appellant's statement not at the time. The burden was on the Appellant to prove his case; the Judge was not responsible for ineffective representation. The Judge took into account the refusal letter and there was no error of law in his determination.
8. In response, the Appellant submitted that the points raised in the refusal letter were baseless. An explanation had been given for all the discrepancies raised therein, but the presenting officer still relied on these discrepancies at the hearing. The Appellant had explained all the points raised by the Judge in his determination.

Discussion and conclusions

9. There were significant discrepancies in the Appellant's and his wife's interview in relation to how they met, their first date, the first time the Appellant's wife went to his house, the marriage proposal, the marriage, the wedding night, his wife's last visit to Lithuania and the description of the front door. The Appellant's explanation that his wife misunderstood the questions in interview did not address these issues.
10. The Judge relied on the discrepancies in the interview and concluded that they were numerous and significant. This finding was open to him on the evidence. The Judge considered the Appellant's explanation, given in his witness statement, that the discrepancies were misunderstandings caused by the lack of an interpreter and the interviewer's failure to record the questions and answers accurately, and his aggressive and impolite manner. The Judge rejected this explanation. This finding was open to the Judge on the evidence.
11. There was no complaint made at the time of the interview or soon thereafter. The Appellant's representative was asked if he had any comments. He stated "Not really, but there was a lack of understanding by the Appellant's wife; she would have been better with an interpreter....everything was in place as it should have been, but there was misunderstanding due to her lack of language skills." This did not amount to a complaint and no explanation for the discrepancies was made until the Appellant made his statement for the hearing. The Appellant and his wife signed the declaration at the end of the interview stating that they understood the questions.
12. The Appellant's explanation for the discrepancies about the wedding

arrangements was not mentioned in his witness statement or before the Judge. He accepted that this hearing was the first time he had explained that his wife thought that questions 141 onwards were about the visit to the registry office to make the wedding arrangements not the actual wedding day. The Judge cannot be criticised for failing to take into account matters which were not before him.

13. The Respondent relied on numerous discrepancies in the refusal letter. The Appellant was represented in the First-tier Tribunal. It was not for the Judge to seek explanations for discrepancies in the Appellant's account. The Judge found that the majority of the Appellant's answers were inconsistent with his wife. He then referred to two examples. It was not the case that the Judge based his decision on two contradictory replies.
14. The Judge considered the evidence of the Appellant and his wife set out in their witness statements, and the explanations given, at paragraph 25 and 26 of the determination. There was no explanation offered for the significant discrepancies referred to at paragraph 9 above. The explanation for the confusion over the wedding day was not mentioned in the Appellant's witness statement and was not before the Judge. I find that there was no error of law in the Judge's determination.
15. The Judge made no error on any point of law which might require the determination to be set aside. The appeal to the Upper Tribunal is dismissed. The determination of the First-tier Tribunal dated shall stand.

Deputy Upper Tribunal Judge Frances
7th June 2014