Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/51748/2013

THE IMMIGRATION ACTS

Heard at North Shields	**Determination Promulgated**
On 17 June 2014	**On 30 June 2014**
Prepared 23 June 2014	

Before

DEPUTY UPPER TRIBUNAL JUDGE JM HOLMES

Between

R. M.
(ANONYMITY DIRECTION)

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr Mohammed, Solicitor, Kingstons Solicitors
For the Respondent: Mr Dewison, Home Office Presenting Officer

DETERMINATION AND REASONS

1. The Appellant is a citizen of Iraq, born on 28 August 1970, who claims to have entered the UK illegally on 23 July 2007. He claimed asylum on 24 July 2007, which was refused.
2. On 9 May 2012 the Appellant applied for a Residence Card as evidence of his acquisition of a right of residence as the unmarried partner of an EEA citizen. That application was refused on 20 June 2012. Although the Appellant initially sought to appeal against that decision, he withdrew his appeal on 21 August 2012 intending instead to make an application in his status as

the spouse of the EEA citizen; relying upon a marriage to his sponsor on 19 July 2012.

3. On 21 August 2012 that application was duly made. It was refused on 10 September 2012 for lack of supporting evidence. On 17 September 2012 the Appellant made a further application on the same basis. The Respondent initially refused that application 10 April 2012, but then withdrew the decision on 31 July 2012, only to remake it so as to refuse the application on 30 October 2013.
4. The Appellant's appeal against the decision of 30 October 2013 was heard on 18 February 2014, and it was allowed under the EEA Regulations 2006 in a Determination promulgated on 4 March 2014 by First Tier Tribunal Judge Caskie.
5. By a decision of First Tier Tribunal Judge Keane dated 15 April 2014 the First Tier Tribunal granted the Respondent permission to appeal on the basis that it was arguable the Judge had erred in reaching contradictory findings of fact, and that his decision was accordingly irrational.
6. The Appellant filed a Rule 24 Notice on 28 May 2014. He argued that the grant of permission was misconceived, and that the Respondent had not asserted in the grounds that the Judge's decision was irrational. It was argued there was no material error in the approach taken to the issue of whether the Appellant was lawfully married to the sponsor.
7. Thus the matter comes before me.

<u>The validity of the marriage</u>

8. The Respondent's starting point was that the Determination did not disclose any finding of fact upon the issue of whether or not the Appellant had entered into a valid marriage with the sponsor. This issue was said to arise because the Appellant had disclosed upon making his asylum claim in July 2007 that he was then married to an Iraqi citizen, who was living in Iraq. It was argued that the Appellant had failed to establish that he was free to lawfully marry the sponsor, because having never returned to Iraq he had failed to establish that this marriage had ever been terminated.
9. The Appellant produced his original marriage certificate before me. It would appear that this document was also in evidence before the Judge. The marriage certificate records in the Deputy Registrar's hand the Appellant's marital status as "previous marriage dissolved". In consequence Mr Dewison accepted that this certificate established that the Appellant had disclosed to the

Deputy Registrar in question that he had previously been married, and that in order for the Deputy Registrar to go on and marry him to the sponsor, she must have been satisfied on the evidence that he had produced to her that this previous marriage had been terminated by divorce. He was in my judgement quite right to do so.

10. Whilst it is not entirely clear from doubt which documents the Appellant did produce to the Deputy Registrar, because there is in evidence no contemporary record of what they were, the available evidence does show that the Appellant did not hide his marital status from the Deputy Registrar (and the Respondent's fears that he did are without foundation), and that the Deputy Registrar did accept the evidence that he produced to establish that he had been validly divorced. There is no suggestion that any document in evidence before the Judge was a forgery; the Respondent's case was simply that they were unreliable, because the Appellant was himself an unreliable witness. Absent any evidence to establish the contrary, Mr Dewison therefore accepts that there is in these circumstances no basis upon which the Respondent can properly question the validity of the marriage entered into with the sponsor on 19 July 2012. To the extent that the Judge did err in failing to deal with the issue of the validity of the marriage in terms, it is accepted that this is not an error that requires his decision to be set aside and remade.

Marriage of convenience

11. The Respondent's alternative argument is that on the findings of primary fact that the Judge did make, he ought to have gone on to find that the marriage relied upon was a "marriage of convenience", or to give adequate reasons as to why he accepted that it was not. This is in essence a perversity challenge, as indeed the Judge granting permission identified, and as Mr Dewison candidly accepts. The Respondent therefore seeks to overcome a very high threshold; Miftari [2005] EWCA Civ 481. "Perversity" is a demanding concept, which could be made out if a challenge established that a finding of fact was wholly unsupported by the evidence, but not if the challenge amounted merely to a disagreement with the finding of fact in question; R (Iran) [2005] EWCA Civ 982.

12. In my judgement, whilst it is clear that the Appellant had in many respects demonstrated himself to be an unreliable witness (as the Judge had noted), it did not automatically follow that the Judge was bound to find that everything that he had to say was untrue, or, to

find that any marriage entered into by him within the UK was bound to be a marriage of convenience. To the extent that this was the Respondent's challenge I am satisfied that it was misconceived.

13. I note the Appellant's case did not rely solely upon his own evidence. His claim that this was a genuine relationship of marriage following a lengthy genuine relationship, which had therefore endured for some time, was supported not only by his spouse, but also by an asylum support officer. It was apparently never put to the Appellant's spouse in cross-examination that she was lying about why the marriage had been entered into. In an email of 13 February 2014 the asylum support officer had said that he recalled meeting the Appellant and his then girlfriend (now his spouse) a few times in the course of his work, and that they had discussed the adverse reaction of his girlfriend's father to the Appellant following his introduction to her parents. The presenting officer at the First Tier Tribunal hearing chose not to challenge the Appellant's evidence concerning this email. It was not suggested for example that it was a forgery, or that its content was anything other than the genuine recollection of the author.
14. Whilst the Determination lacks reference to the guidance to be found in Papajorgi (EEA spouse – marriage of convenience) Greece [2012] UKUT 38, the Judge was referred to, and did quote from the guidance to be found in IS (marriages of convenience) Serbia [2008] UKAIT 31. Accordingly Mr Dewison did not suggest that the Judge did not have the relevant principles in mind.
15. In consequence I am satisfied that there is no merit in this second challenge. The Respondent does not come close to discharging the burden that she faces of establishing perversity in the Judge's decision. On the contrary the Judge made findings of fact that were open to him to make, and the reasons that he gave for them were adequate.

Conclusion

16. The Determination does not disclose any material error of law in the Judge's approach to the evidence placed before him. That being so I dismiss the Respondent's appeal.

DECISION

The Determination of the First Tier Tribunal which was promulgated on 4 March 2014 did not involve the making of

an error of law that requires that decision to be set aside and remade. The decision to allow the appeal is accordingly confirmed.

Direction regarding anonymity – Rule 14 Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until the Tribunal directs otherwise the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him, or the sponsor. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to proceedings being brought for contempt of court.

Deputy Upper Tribunal Judge JM Holmes
Dated 23 June 2014