



IAC-FH-AR-V1

**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: IA/29609/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 5th October 2015**

**Decision & Reasons Promulgated
On 15th October 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE PARKES

Between

**HABIB UR-REHMAN
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr I Hussain, Counsel, instructed by Legal Law Solicitors
For the Respondent: Mr L Tarlow, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant in these proceedings, Mr Habib Ur-Rehman, is a national of Pakistan who was born on the 23rd April 1982. He had applied to the Secretary of State for a residence card as the spouse of an EEA national. In the course of the refusal an issue was taken as to the genuineness of the marriage. In doing so the Secretary of State relied on differences given between what the Appellant and his Sponsor had said about what were said to be significant parts of their relationship, how they became engaged and details such as that.

2. The appeal was not heard immediately. There were a number of adjournments. For example on the 12th January the Appellant's solicitors wrote to the IAC requesting the Tribunal in Newport in Wales to request a transfer to London. There was no request then for an adjournment or a suggestion that documentation relating to the pending birth of child might be available. When the case was finally listed before First-tier Tribunal Judge Hussain at Richmond on the 5th March 2015 neither the Appellant nor the representatives attended. There was no request for an adjournment but a request was made for a determination of the appeal on the papers which is what took place.
3. Submissions were invited from the Home Office which were duly recorded and the Judge noted reliance made on the case of IS (Marriages of convenience) Serbia [2008] UKAIT 31 where it was stated that the burden of proving that a marriage is not a marriage of convenience for the purposes of the EEA Regulations rests on the Appellant but it not required to discharge this in the absence of evidence unless supporting a suspicion that a marriage is one of convenience i.e. there is the evidential burden on the Respondent.
4. Even though the Home Office had not provided transcripts of the interviews, the Judge found that there was sufficient evidence to raise the issue of a marriage of convenience. In paragraph 10 Mr Hussain said this: "Having made that finding, it is for me to assess whether the Appellant has discharged the burden of proof that has now shifted to him" and then went on to give reasons for finding that the Appellant had not taken the opportunity provided and had not discharged that burden, and that he found also that the absence of a birth certificate recording the appellant as his father was most troubling. He concluded "For the reasons given I concluded the Appellant has not discharged the burden of proof that his marriage is not one of convenience and the appeal is dismissed."
5. The grounds of application to the First-tier took issue with the findings in paragraph 10 and beyond and also raised Article 8. I will deal with those in turn.
6. The Judge was entitled to rely on the case that had been cited to consider the issue of a marriage of convenience and was entitled on the evidence that had been presented and was also entitled to take into account the evidence that had not been presented, that it had not been shown not to be a marriage of convenience.
7. Article 8 would therefore not arise because there would be no finding available to engage Article 8. There would be no finding of family life. In any event in the refusal letter the Secretary of State had required a further paid application to be made for Article 8 to be considered. No such further application had been made and, with that in mind, and bearing in mind that by this point paragraph 400 of the Immigration Rules applied given that the Secretary of State was prepared to make such a demand, Article 8 was not there to be considered for two reasons. Firstly, there was no paid

application. Secondly, the findings already made by the Judge on the evidence and open to the judge meant that Article 8 could not have been engaged in any event.

8. I am now told that the birth certificate is available. It is not an error for a Judge to not consider evidence which has, for unexplained reasons, not been presented. It may form the basis of a renewed application which the Appellant is entitled to make to the Secretary of State in the usual way, but as my job is limited to correcting errors in the First-tier Tribunal's Decision and Reasons, and I find that there are no errors in the Decision and Reasons on the information that was available to the Judge at the time, I find that there is no error.
9. Accordingly the decision stands and the appeal is dismissed.

NOTICE OF DECISION

The decision of the First-tier Tribunal did not contain an error of law and stands as the disposal of the Appellant's appeal.

No anonymity direction is made.

Fee Award

I have dismissed the appeal and therefore there can be no fee award.

Signed

Date 13th October 2015

Deputy Upper Tribunal Judge Parkes