



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

Appeal Number: IA/33917/2014

THE IMMIGRATION ACTS

**Heard at Bradford
On 16th April 2015**

**Decision & Reasons Promulgated
On 21st May 2015**

Before

UPPER TRIBUNAL JUDGE D E TAYLOR

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**MONIKA ZENOBIA JANICKA BABEL
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: Mr D Mills, Home Office Presenting Officer

For the Respondent: In person

DECISION AND REASONS

1. This is the Secretary of State's appeal against the decision of Judge Atkinson made following a hearing at Bradford on 4 November 2014.

Background

2. Judge Atkinson heard two linked appeals, against two linked decisions, the first against Mr Hussain, a citizen of Pakistan born on 3rd September 1984 and the second, the respondent in this appeal, in relation to an EEA national from Poland born on 14th November 1969.

3. The Secretary of State was satisfied that the couple had entered into a sham marriage. The judge agreed and he dismissed Mr Hussain's appeal against the refusal to issue a residence card as confirmation of a right to reside in the UK. There is no challenge to that decision.
4. The Secretary of State also made a decision under Regulations 19 and 21(b) of the Immigration (EEA Regulations) 2006 to remove the EEA national respondent on the grounds that she had abused her right to reside in the UK.
5. The judge allowed her appeal in the following terms:

"I find that in the personal circumstances of the second appellant the evidence does not show that she is likely to engage in further such actions. I find that the second appellant's behaviour was not motivated by financial gain and that she took the steps that she did as a means of managing her social circumstances that she faced at the time.

In coming to my decision I take the view that the second appellant's personal conduct amounted to a serious threat to a fundamental interest of society, however, significantly, for the reasons given above, the appellant is not a present threat to such interests.

Given my findings above and in particular the lack of a present threat and taking account of the fact that it would be improper to remove the appellant on the grounds of general prevention I find that in all the circumstances it would not be proportionate to remove the second appellant."
6. The Secretary of State challenged that decision on the basis that the judge had not properly applied the relevant Regulations in reaching his decision and permission was given on that basis by Judge Lever on 19th January 2015.

The Hearing

7. Under Regulation 19(3)(c) of the 2006 Regulations, an EEA national who entered the UK, may be removed if the Secretary of State has decided that the person's removal is justified on grounds of abuse of rights in accordance with Regulation 21(b)(2).
8. Regulation 21(b)(2) states that the Secretary of State may take an EEA decision on the grounds of abuse of rights where there are reasonable grounds to suspect the abuse of a right to reside and it is proportionate to do so.
9. The reference by the judge to there not being a present threat is a reference to Regulation 21(5)(c) which relates to the deportation of EEA nationals on public policy, public security and public health grounds which requires that the personal conduct of the person concerned must represent a genuine, present and sufficiently serious threat affecting one of the fundamental issues of society. It is not relevant to Regulation 21(b). Whilst clearly, whether the respondent represents a present threat is a relevant factor in the proportionality exercise, it is clear from the wording

of the determination that the judge had the wrong Regulation in mind and thereby erred in law.

10. His decision is set aside.

Re-making the decision

11. The judge recorded that Ms Babel gave a vague and hesitant account of her relationship with Mr Hussain, often evading answering the questions put directly to her. She was unable to say when they first met or to give a detailed account of her first meeting with him or how they had been introduced. She could not say how the relationship developed and was unable to give an account of her understanding of the Islamic marriage ceremony in January 2014. She demonstrated virtually no knowledge of Mr Hussain's circumstances save that he was a student and could not even say where he studied. The judge concluded that both entered into a marriage of convenience.
12. He took account of the fact that there was medical evidence that Ms Babel had suffered a miscarriage in April 2014 which potentially showed that there was a degree of intimacy between the parties. However he said that it had little probative value in relation to the arrangements for the marriage and their intention. He concluded that she reasonably knew that there were significant concerns about whether the Islamic ceremony was undertaken as a matter of convenience and that she had abused her right to reside in the UK.
13. So far as proportionality was concerned he recorded that she was 46 years old with no significant medical conditions. She lives with her adult son but he only arrived in the UK relatively recently in December 2013 and has no other family living here. She had integrated into life in the UK only to a limited extent and spoke only basic English. The evidence did not establish that she had no links with Poland. On the other hand there was no evidence to suggest that there was any financial arrangement between the parties and medical evidence supporting the view that there were some elements of a relationship albeit not sufficient to amount to a marriage.
14. His findings are the starting point for my decision.
15. I heard further oral evidence from Ms Babel in an attempt to understand a little more about her part in the arrangement but it was very difficult indeed to obtain any proper answers from her. Mr Mills carefully explained to her the reasons for his questioning and the risk she ran, if she failed to attempt to answer them, that negative inferences might be drawn. In spite of his advice she continued not to give any clear answer at all about how long she lived with Mr Husain after the marriage. She seemed to suggest that they had lived together for about six months, which would mean that they separated in June 2014 but she also suggested that she and her son moved to a council house in May, without Mr Hussain and was

most unclear as to whether they were living together in August when the couple were interviewed in Liverpool. Her testimony was similar to that given before the First-tier Judge. She was wholly incapable of giving a straightforward answer to a straightforward question.

16. She said that she was suffering because she had lost the baby and subsequently had had surgery and that she had nothing to gain from the marriage.
17. Ms Babel is a person who has been found, properly in my view, to have entered into a marriage of convenience. There is no hard evidence of her motive. In the first determination it is suggested that she had had a relationship with an alcoholic and she believed that Mr Hussain was a kind man who did not drink alcohol. As Mr Mills very fairly put it, the issue of proportionality will be governed at least in part by an assessment as to whether she is telling the truth deliberately in order to hide her part in the arrangement or whether she has been the victim of a scam.
18. I gained the clear impression that Ms Babel she was deliberately withholding information. She is a 46 year old woman who has been able to travel across Europe, no doubt in search of work, and has been able to find employment as a seamstress with a major company. She speaks some basic English. She did appear anxious and indeed agitated but I conclude that the reason that she was unable to answer very basic questions about how long she lived with her husband was because she was trying to conceal facts from the Tribunal. They could barely communicate and she knew very little about his personal circumstances. There is evidence of a miscarriage, although not of the paternity of the child. I conclude that the couple did not live together at all.
19. There is no evidence that she has any strong ties to the UK save that she has been able to get a council house and she lives with her adult son who has recently arrived from Poland. She speaks very little English, and whilst there is no reason to doubt that she works, little evidence of private life here, and no family life. Her motives for entering into the marriage of convenience remain unknown, but there is no doubt that she did so. Contrary to the first tier judge, I find, in view of her persistent failure to tell the truth, that on the balance of probabilities, there was some kind of financial inducement. Whilst she may well have felt vulnerable as a consequence of a previously abusive partner, she did not enter into this marriage because she wanted to start another relationship, and whilst this experience may well have dissuaded her from doing anything like this again, that in itself does not mean that removal is inappropriate.
20. She has abused her right to reside here and in all of the circumstances it is proportionate for her to be removed from the UK.

Notice of Decision

21. The judge's decision is set aside and re-made as follows. The respondent's appeal is dismissed.

No anonymity direction is made.

Signed

Date

Upper Tribunal Judge Taylor