



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/09862/2015

THE IMMIGRATION ACTS

Heard at Field House
On 23rd June 2016

Decision & Reasons Promulgated
On 26 July 2016

Before

UPPER TRIBUNAL JUDGE REEDS

Between

MUHAMMAD USMAN ANJUM
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Miss Hashmi, instructed by Mamoon Solicitors
For the Respondent: Mr E Tufan, Senior Presenting Officer

DECISION AND REASONS

1. The Appellant is a citizen of Pakistan born on 19th July 1984. He appeals, with permission, the decision of the First-tier Tribunal (Judge Nixon) who, in a determination promulgated on 30th November 2015 dismissed his appeal under the

EEA Regulations. No request was made on behalf of the Appellant for anonymity nor are there any grounds that would support such a direction.

2. The Appellant's immigration history can be summarised as follows. The Appellant entered the United Kingdom with valid entry clearance valid from 20th May 2010 expiring on 23rd September 2011. On 6th September of that year, he gave notice to the Respondent that he was to get married. However it appears that he did not marry his EEA partner. There had been an application made on 22nd September 2011 for a residence card as a partner of an EEA national. This was refused on 12th December 2011. The grounds for refusing the application was that the Appellant had failed to prove that his partner was a qualified person nor was there satisfactory documentary evidence that he had been in a durable relationship with his partner. That decision was appealed by the Appellant and which resulted in the determination of Judge O'Garro promulgated on 1st March 2012 by which his application was dismissed. The Appellant applied for permission to appeal that decision and permission was granted on 3rd April 2012. This resulted in a further hearing before the Upper Tribunal on 15th August 2012. The Upper Tribunal found errors of law in the decision of Judge O'Garro and set aside the decision but remade the decision by dismissing the appeal of the Appellant and his partner.
3. The present application was made on 19th September 2014 for a residence card as an unmarried partner of an EEA national who had been exercising her treaty rights in the United Kingdom. The application was refused on 24th February 2015. The reasons for refusing that application was summarised by the First-tier Tribunal at paragraphs [8] to [10], in essence, the Secretary of State considered that the Appellant had entered into a marriage of convenience in order to remain in the UK. It was considered that there were discrepancies in their respective interviews and that the marriage was a Muslim ceremony and therefore was not valid in English law. The Secretary of State also considered that there had been insufficient evidence to demonstrate that they were in a durable relationship. The Secretary of State also relied on the previous determination of Judge O'Garro referred to earlier.
4. The Appellant appealed that decision and it came before the First-tier Tribunal on 17th November 2015. The conclusions are set out by the judge at paragraphs [11] to [17]. The judge found that the Secretary of State had not satisfied the evidential burden to justify that there was a reasonable suspicion that this was a "marriage of convenience" applying **Papajorgji (EEA spouse - marriage of convenience) Greece [2012] UKUT 00038 (IAC)**. The judge went on to find at [13] that the marriage was not valid and at paragraphs [14] to [16] reached the conclusion that it had not been demonstrated that this was a genuine relationship or that it was a "durable relationship". Thus the judge dismissed the appeal.
5. The matter comes before the Upper Tribunal to decide whether the First-tier Tribunal's decision involved the making of an error on a point of law. Permission was granted by the First-tier Tribunal on 12th May 2016.

6. I have heard submissions from both advocates, which have been noted in my Record of Proceedings and where relevant are incorporated into my findings.
7. After having considered the Grounds of Appeal advanced on behalf of the Appellant and the oral arguments of the advocates, I am satisfied that the decision of the First-tier Tribunal did involve the making of an error on a point of law. I shall set out my reasons for reaching that decision.
8. The judge began the determination at [11] by stating that:-

“There is only one issue for me to determine, whether or not the marriage between the Appellant and the EEA national is a genuine marriage of substance or one of convenience.”

9. The judge then went on to apply the decision of **Papajorgji** (as cited) and at [12] reached the conclusion as follows:-

“12. I find that the Respondent had not justified a reasonable suspicion in this case. As stated in the refusal letter, the only evidence relied upon by the Respondent to reach that suspicion is the supposed discrepancies between the couple in interview. I have been provided with a transcript of that interview and I find that there are no differences of any substance in lengthy interviews. I find that there are some minor differences but nothing significant certainly nothing to justify a suspicion that the marriage is one of convenience. I find that these answers alone go nowhere near finding a reasonable suspicion of a marriage of convenience.”

10. However I observe that the parties were not married as no valid marriage had taken place as the parties had only undergone an Islamic marriage. It must therefore follow that the judge in reaching that finding and by reference to the replies in their respective interviews, had found that there had been no real differences in the accounts given by each of them. Whilst the grounds make reference to the judge finding no discrepancies in the interview, the judge actually referred to “minor discrepancies”. However it is plain from reading the determination that the judge, having considered the replies given by each of the parties after being subjected to lengthy interviews, did not find there to be any or any significant or material differences in the replies given by each of them to the questions asked.
11. The questions asked by the interviewer to each of the parties consisted of questions designed to test whether this was a genuine relationship. Those questions included how they met, their first date, how the proposal of marriage was made, the circumstances of the marriage, and where they lived and other relevant questions. The judge’s findings at [12] were to the effect that those questions when analysed did not demonstrate that there was any significant or material differences in the replies given by each of them independently of the other. However, the judge went on to make a contrary finding at [17] that they had not shown that they were in a “durable relationship” and in particular that “there was very little evidence to show that they had entered into a relationship ...” (see paragraph [13]). Mr Tufan submitted that this

appeared to be confusing and perplexing but the issue was whether it was material. He submitted that the finding made by the judge as to whether it was a marriage of convenience was in essence an irrelevant paragraph and could be ignored. He therefore submitted that the judge's findings thereafter as to the genuineness of the marriage was sufficient to address the issue of whether there was a durable relationship. He referred to the findings made as to the documents and that the judge had considered what could be described as a poor immigration history at [16] and that the conclusion to the judge was not an irrational one but was open to him to make.

12. I cannot accept the submission that the finding made at paragraph [11] was one that had no relevance to the findings that were made thereafter. The findings that were made at paragraphs [11] and [12] are relevant to the issue of the genuineness of the relationship and thus the durability of the relationship as the questions in the interview were by their very nature relevant in establishing the nature of that relationship. The judge's findings, after considering the replies in the interview reached the conclusion that there were no significant or material differences in the replies relating to the important details of the relationship. However the judge then at paragraph [15] onwards went on to find the opposite by reference to answers in the interview. Thus in my judgment, those findings are contradictory and inconsistent. Either the judge had found there were significant discrepancies which went to the issue of the genuineness of the relationship as set out at paragraph [15] or that the Appellant and his partner had given consistent evidence relevant to their relationship at paragraph [12].
13. Furthermore, I accept the submission made by Miss Hashmi that the judge did not consider the oral evidence of the parties as to the genuineness or otherwise of their relationship. There is no reference within the determination to the evidence given by either of the parties. Whilst I would agree that it is not incumbent upon the judge to record all the evidence verbatim but the important and relevant aspects of the oral evidence should be considered in any analysis in the findings of fact. At paragraphs [14] to [16], there is no reference to the parties' oral evidence concerning the relationship despite the finding made that the judge had seen "no evidence of any affection" and at paragraph [15] that the judge made reference to the "absence of other evidence".
14. Furthermore whilst the judge considered the documentary evidence at paragraphs [14] and [15], it is not clear from the determination whether the judge had considered all the documentary evidence that was before the Tribunal. The judge made reference to utility bills and council tax bills but Miss Hashmi made reference to a further document (a water bill) which was in the joint names of the parties. There was also a TV licence in the Appellant's name [page 78] with the payments being made by the Appellant's partner from her own bank account [see page 57]. I could find no copy document on the file but Miss Hashmi submitted that the document was on her file and was a relevant document. It is not possible for me to determine whether or not that document was put before the Tribunal but there was evidence

that was capable of further analysis in relation to the genuineness or durability of the relationship by way of the oral evidence and the documentary evidence.

15. Furthermore Miss Hashmi made a further submission that the fact that the parties live in a joint household with others did not necessarily preclude the Appellant and his partner being in a durable relationship [see paragraph 5 of the grounds]. In this respect she made reference to the submission that the tenants have reached the decision to share the bills and that each party paid a separate bill and are such that did not detract from the relationship.
16. In the light of the contradictory findings made by the judge as to the core issue and there does not appear to be any assessment of the oral evidence given by the parties relating to the genuineness of the relationship and the durability of it, I am satisfied that the judge's decision involved the making of an error on a point of law. I cannot resolve the issue as to whether all the documents had been considered but for the reasons that I have set out, when taken together the contradictory findings undermine the decision. I therefore set the decision aside with none of the findings of fact being preserved.
17. As to remaking the decision, Miss Hashmi submitted that as there was to be further evidence to be relied upon including evidence of the Appellant's partner's pregnancy that she invited the Tribunal to remit the appeal to the First-tier Tribunal.
18. As this is a case which required an assessment of both the parties and a consideration of all the documents, including the interview notes, the Appellant's previous immigration history and the oral evidence of the parties, I was satisfied that the correct course is to remit the appeal to the First-tier Tribunal for a fresh hearing.

Notice of Decision

19. The decision of the First-tier Tribunal involved the making of an error on a point of law. The decision is set aside with no findings of fact being preserved. The appeal is remitted to the First-tier Tribunal for a fresh hearing.

Anonymity direction is not made.

Signed

Date 25/7/2016

Upper Tribunal Judge Reeds