



IAC-FH-CK-V1

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

Appeal Number: IA/25093/2014

THE IMMIGRATION ACTS

Heard at Field House

On 18 March 2016

**Decision & Reasons
Promulgated
On 5 April 2016**

Before

UPPER TRIBUNAL JUDGE ESHUN

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

and

**MR ISHTIAQ KHAN
(ANONYMITY DIRECTION NOT MADE)**

Appellant

Respondent

Representation:

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

For the Respondent: Ms D Revill, Counsel, instructed by Rahman & Company Solicitors

DECISION ON ERROR OF LAW

1. The appellant, the Secretary of State for the Home Department, has been granted permission to appeal the decision of First-tier Tribunal Judge Howard, who, in a decision promulgated on 8 September 2015 allowed the appeal of the respondent against a decision made on 4 June 2014 to

refuse to issue an EEA residence card under Regulations 2 and 17 of the Immigration (European Economic Area) Regulations 2006.

2. At the hearing before the judge the Secretary of State was not represented. The judge heard evidence from the respondent and Ali Hamoudi, who informed the judge that it was he who had introduced the respondent to his wife. The respondent explained that his wife was not at the hearing as she had travelled to Poland due to a recurrent illness (depression) suffered by her mother.
3. The judge's decision was very brief. He said as follows from paragraphs 13 to 18:

"13. In her Reasons for Refusal Letter the respondent sets out the reasons why it was concluded the appellant's marriage is one of convenience. Both appellant and sponsor were asked to attend an interview on the 21st May 2014. Both attended. They were interviewed separately, but asked the same questions for comparison purposes. Both were asked in excess of 380 questions. Each answered all the questions they were asked.

14. When it came to an analysis of the answers given the respondent identified three questions where significantly different answers were given. In turn those questions were first, their second date, the appellant saying it was one week after the first and that they went clothes shopping and to a restaurant, while the sponsor stated it was two weeks later and that they went to the appellant's home.

15. The second, whether their respective parents were told in advance about the wedding. The appellant told his parents and this is the answer he gave. His wife was asked if her husband's parents know they are married and she replied they did. The appellant was asked if his wife's parents knew about the wedding in advance. He stated his wife and her parents don't get on too well. He stated her mother found out after her sisters and that she knows now. The sponsor said she did not tell her parents as she doesn't keep in touch with them. She added they know about it now.

16. The third, who paid for the wedding dress. In his answer the appellant stated that it was bought from the shop of a friend and that his uncle paid. She said it was hired from a friend of her husband.

17. The respondent concluded that these answers are so different as to lead to the conclusion the marriage is a sham.

18. *The question I must answer is whether those answers, they are the only ones relied on by the respondent, are evidence justifying reasonable suspicion such as to impose on the appellant an evidential burden. Having considered the complex answers given by both appellant and sponsor to those three subjects and considering the answers given to the very large number of other subjects about which they were questioned I am not satisfied the answers given to those three subjects are such as to justify a reasonable suspicion that the marriage is not genuine."*

4. First-tier Tribunal Judge Grant-Hutchinson granted permission as follows:

*"It is arguable that the judge has failed to give adequate reasons why the respondent has not discharged the burden with reference to the case of **MK (duty to give reasons) Pakistan [2013] UKUT 00641 (IAC)** by simply stating*

'having considered the complex answers given by both the appellant and the sponsor to those three subjects about which they were questioned I am not satisfied that the answers given to those three subjects are such as to justify a reasonable suspicion that the marriage is not genuine'."

5. Ms Revill submitted that the judge did not make a material error of law and that although his reasons were brief, they were sufficient in the context of the issues raised by the respondent in the refusal letter.
6. I disagree with Ms Revill's submission. I accept Mr Clarke's submission that it is not about the number of questions that the sponsor and the respondent were asked at the interview and the answers they each gave. The judge should have engaged with the three issues raised by the Secretary of State and considered to what extent, if any, they undermined the respondent's relationship with his EEA wife. The judge failed to do this.
7. Consequently I find that the judge erred in law. His decision cannot stand.
8. As remaking this decision will require evidence from the respondent and his sponsor, I am unable to remake it.
9. The appeal is therefore remitted to Hatton Cross for rehearing by a judge other than First-tier Tribunal Judge Howard.

Signed

Date

Upper Tribunal Judge Eshun