IAC-AH-DN-V1

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/30396/2014

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 3 February 2016	**On 24 February 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE RAMSHAW

Between

MR JASWINDER SINGH
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr M Aslam, Legal Representative
For the Respondent: Ms A Fijiwala, Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. This is an appeal by the appellant who appeals against the decision of the First-tier Tribunal dismissing his appeal against a decision of the respondent taken on 10 July 2014 refusing to issue him with a residence card as the spouse of an EEA national exercising treaty rights in the United Kingdom.

Background Facts

2. The appellant is a citizen of India who was born on 18 January 1984. He applied for a residence card as confirmation of a right of residence under European Community law as the spouse of an EEA national exercising treaty rights in the United Kingdom. That application was refused because the respondent did not accept that the appellant's marriage to the sponsor was genuine. The respondent considered that the marriage undertaken on 13 December 2013 was one of convenience for the sole purpose of the appellant remaining in the United Kingdom. The respondent was also not satisfied that the appellant's sponsor was exercising treaty rights in the United Kingdom as defined under Regulation 6 of the Immigration (EEA) Regulations 2006 ("the 2006 Regulations").

The Appeal to the First-tier Tribunal

3. The appellant appealed against the decision to the First-tier Tribunal. In a decision promulgated on 16 April 2015 First-tier Tribunal Judge Lodge dismissed the appellant's appeal. The First-tier Tribunal found that the appellant's marriage was a marriage of convenience. The judge found it unnecessary to consider the question of whether the appellant had established that the sponsor was exercising treaty rights.

The Appeal to the Upper Tribunal

4. The appellant sought permission to appeal to the Upper Tribunal. The grounds of appeal in essence assert that there was unfairness on the basis that the judge found that the sponsor was evasive in her Home Office interview. That matter was not put to the sponsor denying her an opportunity to offer an explanation. A number of factual inaccuracies are asserted to have arisen in the judge's findings, that the judge erred in placing weight on certain matters and in making adverse findings on irrelevant matters. On 25 June 2015 First-tier Tribunal Judge Shimmin refused the appellant permission to appeal. The appellant renewed his application to the Upper Tribunal and on 14 October 2015 Deputy Upper Tribunal Judge Chapman granted the appellant permission to appeal. Both applications for permission to appeal were submitted out of time. Although Judge Chapman considered that the reasons provided are unsatisfactory she extended time so as to admit the application for permission to appeal. The grant of permission sets out that the grounds of appeal disclose arguable errors of law. In particular, it is arguable that the judge failed to take account of material considerations and evidence in making his findings in respect of the credibility of the parties, made material errors of fact and failed to provide proper and adequate reasons for his findings.

Summary of the Submissions

The Appellant's submissions

5. The grounds of appeal submit that the First-tier Tribunal judge's finding that the sponsor was evasive in her Home Office interview is flawed. It is submitted that this point should have been put directly to the sponsor asking her to explain why she appeared to have difficulty in answering the questions. It is asserted that the First-tier Tribunal Judge's finding of evasiveness goes to the heart of the appeal and that this finding is central to the judge's determination and conclusion that the marriage is one of convenience. Mr Aslam submitted that the marriage interview record was adduced for the first time at the appeal hearing. It is from this interview that the judge found that the sponsor appeared to be evasive. He referred to the Reasons for Refusal Letter of 10 July 2014 in which the sole basis of refusal was the same interview. The respondent lists eight points in support of an allegation that the appellant and the sponsor do not know each other. At bullet point number 6 he submitted that this is concerned only with the appellant so in his submission there are only seven points. He referred to paragraph 24 of the First-tier Tribunal decision where he submitted that the judge clearly considered that the sponsor had given evidence in her interview through a Hungarian interpreter. I indicated to Mr Aslam that my view of the paragraph he referred to was that the judge had made a typing error and had in fact intended to refer to interview not to interpreter. I indicated that this appeared to me to be the only sensible reading of the paragraph as the judge in that sentence sets out 'as previously remarked'. The only remarks made by the judge in the determination previously referred to the appellant and the sponsor being content with the manner in which the interview had been conducted. In response he indicated that that may well be the case. He referred me to the interview record and to several questions for example question 15 where the sponsor says "Err sorry again please". This occurs in response to several questions and it is from this that the judge decided that the sponsor was evasive. However, he submitted, it is clear that she had difficulties understanding the questions. This could have been as a result of the accent of the interviewer. In his submission what is described by the judge as evasiveness could be and looks like a lack of English or that the sponsor's English is not terribly good. He submitted that it is the interview record which goes to the heart of the case. The starting point in this appeal is that there is a flawed initial finding of the judge that the sponsor was evasive that has infected the whole of the decision. On the grounds of fairness, it should have been put to her.

6. It was submitted that the judge's finding that there is a complete lack of communication between the parties is materially flawed. Further it is asserted that it is untrue that the appellant was not divorced when he met the sponsor. The appellant was divorced on 31 October 2012 and his son was born in 2008. He met the sponsor in April 2013. It is asserted that the judge as a result of this mistake finds that there is a complete lack of communication between the parties.

7. The judge's finding that the sponsor's previous relationship with an Indian national was not genuine is speculative. It is submitted that it is entirely plausible that the sponsor abandoned the possibility of marriage with her

previous partner because of differences. Mr Aslam submitted that the judge, on the basis of suspicion, found against the sponsor because she had entered into a previous relationship in 2011 with a person who just happened to be of Indian nationality. He submitted that a gap of two years cannot be considered to be very soon after. The nationality of the previous partner is an irrelevance.

8. At paragraph 29, with regard to the wedding rings, he submitted this was an erroneous finding as not wearing a wedding ring cannot be determinative of whether or not a couple are married. There could be cultural reasons as to why they do not wear a wedding ring.

9. The grounds assert that the First-tier Tribunal Judge errs in making adverse findings on the basis that neither the appellant nor the sponsor chose to wear wedding rings at the hearing. The judge failed to consider cultural norms in that wearing a ring may not be the cultural norm for either party in any event the failure to wear a ring cannot be determinative on the question of whether or not the marriage is one of convenience.

10. Mr Aslam submitted that the judge should have made findings in relation to whether or not the sponsor was exercising treaty rights submitting that there was evidence in the appellant's bundle of a change of employment, one payslip from the new employer. The original document was handed in to the judge it has now been posted back to the appellant.

11. The respondent filed a Rule 24 (of the Tribunal Procedure (Upper Tribunal) Rules 2008) response. It is asserted that the presence or otherwise of an interpreter at the interview is not really the issue. The witness appears to have indicated that she was happy with the conduct of the interview and the judge's comments are just as pertinent in that context. It is asserted that as observed there were clear issues with the evidence of the appellant and the witness. It was clearly open to the judge to conclude that this was a marriage of convenience. Ms Fijiwala indicated that her reading of the judge's decision in relation to the use of the word 'interpreter' is that it was a clerical error. The judge considers, at paragraph 9, that the sponsor was happy with the interview. It is also clear from the witness statement and the interview record, at question 7, that the sponsor indicated that she was content for the interview to be conducted in English. It is open to the judge to find that the appellant was evasive. She referred me to a number of particular questions in the interview, for example questions 213 to 215, where the sponsor was asked when the appellant had proposed marriage to her she first of all said after May, then the interviewer sought clarification and her response was "I don't know May or June" and then she said "I don't know". She asserted that the grounds were speculative when they referred to 'it might be that the sponsor did not understand the interviewer's accent'. She had stated that she was happy at the interview not only at the interview stage but also in her witness statement as well. There are significant discrepancies outlined by the judge. The judge also set out, at paragraph 25, a number

of discrepancies in relation to the appellant's interview. The judge was entitled to arrive at the conclusion that the impression of the sponsor in interview was one of evasiveness on the basis, as the judge sets out in paragraph 24, that throughout the interview the sponsor failed to answer simple questions. The judge was not required to put this finding to the appellant. It is one that was open to the judge.

12. In relation to the factual error regarding the date of the appellant's divorce the judge had noted this correctly in paragraph 12 as October 2012. She submitted that the appellant was inconsistent in interview about the date of his divorce. At question 37 he says in 2010 or 2011. She submitted that this was therefore not a material error given the other reasons for disbelieving the appellant and the sponsor. In paragraphs 28 and 29 the judge gave further reasons.

13. She submitted that it was a relevant factor on the evidence before the judge that the sponsor had previously entered into a relationship and that, very shortly after approval for the marriage was refused, the relationship ended. With regards to the assertion that the judge was incorrect to find that the sponsor had entered into a relationship with the appellant very soon after the ending of the previous relationship, she submitted that it was a matter for the judge as to what he regards to be soon after. She submitted that there was no error in the judge referring to the previous relationship, however the judge in fact states that it was a coincidence.

14. With regard to the issue concerning the wedding rings she asserted that there was no evidence that there was a cultural reason for not wearing the rings and what in fact was said was it was because the appellant and the sponsor could not wear them when they were working. As the judge correctly pointed out at the hearing the appellant was not working there was no reason why he could not have worn his wedding ring.

Discussion

15. It is asserted that the judge's finding that the sponsor had been evasive in interview ought to have been put to the sponsor. It is also asserted that the judge incorrectly assumed that the sponsor was interviewed through an interpreter. I note that in paragraph 24 the judge sets out "*as previously remarked the sponsor had indicated she was happy with the interpreter and I am at a loss to understand why so many questions had to be repeated before being rewarded with an answer."* I consider that the reference in this paragraph to 'interpreter' was intended to be a reference to 'interview'. The judge commenced this sentence with "as previously remarked". That must be taken to refer to paragraph 9 which is under the heading 'evidence at the hearing'. The appellant had been asked why different answers had been given to questions. In answer he had said that his wife probably did not understand English and had therefore got some answers wrong. It was pointed out to him that she had said that she was happy with the way in which the interview was conducted. He said that they were both satisfied that the interview was well conducted. There is

no reference in the judge's decision prior to paragraph 24 to the sponsor being happy with an interpreter. I consider that this is merely a typographical error and the intention was for the judge to record the remarks that were set out in paragraph 9 regarding being content with the interview.

16. Turning to the assertion that the judge ought to have put to the sponsor that his impression of the interview was one of evasiveness, I consider it was not incumbent upon the judge to do so. The circumstances were that both at the conclusion of the interview itself the sponsor had indicated that she was content with the manner in which the interview was conducted and, at the hearing, the appellant (on behalf of the sponsor) also gave an indication that both he and the sponsor were satisfied that the interview was well conducted. Further in gaining his overall impression it was not merely the evasiveness of the sponsor that the First-tier Tribunal Judge took into consideration. The judge was concerned with the lack of knowledge that both parties expressed with regard to basic questions concerning their life together. The judge sets out, at paragraph 23, answers that the sponsor gave in interview that demonstrated a lack of knowledge about the appellant:

> "The sponsor did not know when the appellant was divorced, Q31. She did not know the exact name of his son, Q40. She did not know whether the appellant financially supported his son, Q49. She did not know why he came to the UK, Q53. She did not know what type of visa her husband had had when he first arrived in the UK, Q59. She did not know how long her husband had been living at his address in Watford, Q101."

17. The judge also set out a number of questions from the appellant's interview that demonstrated that the appellant also appeared to have very little knowledge of his sponsor's situation. At paragraph 25 the judge sets out:

> "With regard to the appellant's interview he did not know when his wife returned from Hungary having made a trip there in May 2014, Q82. He did not know why his wife came to the UK originally, Q90. He could recall little of the conversation they had when they first met, Q159. He could not remember when he proposed to her, Q189. He did not give her a ring when they got engaged, Q197 (compare Q220 of the sponsor's interview where she indicates he did give her a ring when they got engaged). He said initially that his wife's religion was Sikh correcting that to Christian but was unaware that she was a Roman Catholic, Q229."

18. It is clear that there were numerous inconsistencies between the appellant's and the sponsor's account given in interview. The finding of the judge in these circumstances was one that was open to him. It was not just the interview that the judge took into consideration he also considered that in the evidence given before him at the hearing there were several inconsistencies. At paragraph 26 the judge records:

> "In evidence before me today the appellant said that he had sent wedding photos to his parents but did not know if his wife had sent photos to her parents in Hungary. He said his wife did not know that he had sent the

> wedding photos because she was at work at the time. When she was questioned she said she thought he had sent the photos but they had not discussed it. Both parties indicated that they did not discuss in any detail their previous relationships. The sponsor said in her evidence that she did not know why her husband was not wearing a wedding ring."

19. There were several other inconsistencies set out in the judge's record of the evidence at the hearing. Not every single one of them is included in the judge's findings. The judge does not have to set out every single piece of evidence that he has taken into consideration when reaching his findings on credibility. He has set the evidence out in some detail in paragraphs 6 to 18 of the decision. It is clear that the judge has taken all of that evidence and the inconsistencies contained within that evidence into consideration when reaching his conclusion.

20. The judge had the opportunity of hearing the evidence of the appellant and the sponsor at first hand and was able to assess their credibility both from the oral evidence given at the hearing and the evidence obtained from their witness statements and their interviews.

21. The judge erred when considering that the appellant was not divorced at the time that the appellant and the sponsor met which led the judge to consider that he thought it unlikely that it would not be very much be the subject of discussion between them. The judge considered that there was (in addition to the lack of knowledge and inconsistencies) a complete lack of communication. Two factors were identified – the sponsor's previous attempt to marry an Indian citizen and the appellant not being divorced at the time they met. I do not consider that error tainted the overall conclusion reached by the judge. The lack of communication was a further factor. The judge found that he was satisfied that the inconsistencies and lack of knowledge of each other demonstrated by the parties pointed to the fact that theirs is a marriage of convenience. That finding on the evidence set out by the judge was one that was reasonably open to him to find.

22. With regard to the assertion that the judge errs in placing weight on the Indian nationalities of the appellant and her previous partner I consider that any such error is not material. It is clear from the structure of the decision that, as set out at the end of paragraph 27, the judge reached his conclusion that the marriage was one of convenience taking into consideration the evidence of the inconsistencies and the lack of knowledge of each of other. In the following paragraph the judge indicates:

> "I am fortified in that conclusion by the fact that the sponsor has previously tried to marry an Indian national ... I also find it too much of a coincidence that she then finds another Indian partner so soon after being bent on marriage to a citizen of that country."

23. It is clear that this evidence did not form part of the judge's consideration in reaching his conclusions that the marriage was one of convenience as

the judge set out this 'fortified' the conclusion that had already been reached and therefore this error was not material.

24. It is asserted that in making adverse findings on the basis that neither the appellant nor the sponsor chose to wear wedding rings is in error. I do not consider that it was an error for the judge to fail to consider cultural norms because a reason had been given by both the sponsor and the appellant as to why they were not wearing their wedding rings on the day of the hearing. The answers given to the question were not anything to do with cultural norms but concerned the fact that they were not allowed to wear their wedding rings at work. I accept that the wearing of a wedding ring is not necessarily evidence as to whether a marriage is a genuine marriage. This evidence did not form part of the evidence taken into consideration by the judge prior to reaching his conclusion that the marriage was a marriage of convenience. As the judge indicates in paragraph 29 he considered that in the context of the evidence it was a further indication to him that the parties are not genuinely married.

25. With regards to the contention that the First-tier Tribunal Judge erred by not making findings as to whether or not this sponsor was exercising treaty rights, having found that their marriage was a marriage of convenience there was no requirement for the judge to then continue and to make findings on the exercise of treaty rights issue.

26. For the reasons given above there is no material error of law in the First-tier Tribunal Judge's decision.

27. I have considered whether any parties require the protection of an anonymity direction. No anonymity direction was made previously having considered all the circumstances and evidence I do not consider it necessary to make an anonymity direction.

Notice of Decision

The appellant has not discharged the burden upon him of showing that there is any material error of law in the First-tier Tribunal decision, without which that decision is not susceptible to being set aside. The appeal is therefore dismissed. The decision of the respondent stands.

Signed P M Ramshaw Date 19 February 2016

Deputy Upper Tribunal Judge Ramshaw