



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

Appeal Number: IA/23298/2012

THE IMMIGRATION ACTS

**Heard at Glasgow
on 2 October 2013**

**Determination
promulgated
on 3 October 2013**

**Before
Mr C M G OCKELTON, VICE PRESIDENT
UPPER TRIBUNAL JUDGE MACLEMAN**

Between

ARIF HUSSAIN

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

For the Appellant: Mr D Brown, of Drummond Miller, Solicitors
For the Respondent: Mr A Mullen, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant appeals against a determination by First-tier Tribunal Judge Agnew, dismissing his appeal against refusal to issue a residence card as confirmation of a right of residence as the family member of an EEA national.

2. Mr Brown made three submissions:

(1) The judge erred (paragraph 13) by identifying and giving adverse significance to a discrepancy over whether the appellant and his wife resided at no 92 or at no 97 Main Street. She said that no 97 was the address on the marriage certificate, but in fact it says no 92, consistently with other evidence.

(2) The judge dealt inadequately with a number of items of evidence showing that the appellant and his wife shared the same address.

(3) The judge gave too much weight to the lack of cohabitation after the marriage. She made no clear finding over whether the couple resided at either of the addresses where there was evidence that they lived together, and dwelt on the evidence that the spouses were no longer living together, when the real question was whether this was a marriage of convenience at the time it took place. There was considerable evidence of cohabitation before and for a period after the time of the marriage. The appellant's wife had given a statement and attended twice to give evidence in his support. The judge was distracted by the evidence that the couple became distanced from each other at a later date.

3. On submission (3), Mr Mullen accepted that the judge missed the point that the question was not whether the parties were later estranged. The determination would have been sound if the question was whether the marriage relationship had broken down, but he could not say that the determination laid a proper foundation for finding that this had been a marriage of convenience at the outset. He could not resist the conclusion that there had been error of law.
4. We indicated that the decision would be remade in favour of the appellant.
5. On submission (1), we do not think that the judge did attribute any adverse significance. She did not say there was any, and the addresses of the two parties on the certificate are the same. We think this was noted as a small point in the appellant's favour, and that "97" in determination is a typographical or narrative error.
6. On submission (2), we found in course of submissions that the council tax bill (paragraph 14 of the determination) was in the terms which to be expected, if the chronology of the couple's life together was as claimed. The judge misunderstood the letters from the electoral registration office (paragraph 15) which did show that the parties were already registered voters at the address to which the letters were sent. Those points assisted the appellant in reaching a fresh decision.

7. The evidence was that although difficulties arose after the date of the marriage, there was earlier cohabitation and a genuine relationship. The appellant discharged the onus of showing that this was not entered into as a marriage of convenience only.
8. The determination of the First-tier Tribunal is **set aside**. The appeal, as brought by the appellant to the First-tier Tribunal, is **allowed**.
9. No order for anonymity has been requested or made. No fee award has been requested or made.

A handwritten signature in black ink, appearing to read "Hugh Maclemon". The signature is written in a cursive style with a large, stylized initial 'H'.

2 October 2013
Judge of the Upper Tribunal