



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

Appeal Number: IA/12462/2013

THE IMMIGRATION ACTS

**Heard at Glasgow
On 15 August 2014
Decision given orally**

**Determination
Promulgated
On 20 August 2014**

Before

UPPER TRIBUNAL JUDGE DAWSON

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

JUNAID BASHARAT

Respondent

Representation:

For the Appellant: Mr K Young, Senior Presenting Officer
For the Respondent: Mr Shoaib Solicitor

DETERMINATION AND REASONS

1. The Secretary of State has been granted permission to appeal the decision of First-tier Tribunal Judge Boyd who, for reasons given in his determination dated 16 January 2014, allowed the appeal by Mr Basharat

(whom I shall refer to as the claimant) under the Immigration (European Economic Area) Regulations 2006.

2. The background facts are these. The claimant is a national of Pakistan where he was born 15 December 1988. On 2 November 2012 he applied for a residence card as the family member of a Greek national, Tabinda Gulfraz, who lives in Glasgow. It is the claimant's case that the couple married in a mosque on 16 September 2012 which was registered in the district of North Lanarkshire, Bells Hill on 17 September 2012 by the Assistant Registrar pursuant to the Registration of Births, Deaths and Marriages (Scotland) Act 1965.
3. The Secretary of State refused the application for reasons given in her letter dated 28 March 2013 which accompanied the decision. The first was that the claimant had failed to provide sufficient evidence to demonstrate that his wife was currently a qualified person as a worker as defined in reg. 6. The second reason related to the marriage. These concerns are set out in the decision letter and although the Secretary of State did not specifically say so, the parties have inferred the assertion from her letter that it was a marriage of convenience. It appears the Secretary of State's concerns principally related to the claimant's explanation that his wife had been born in Greece. The marriage certificate stated that she is a Pakistani national and was born on 12 March 1993 rather than 31 January 1993 as stated by the claimant.
4. Another concern was that when Miss Gulfraz had attended the police station she confirmed where she had been born, that she had known the claimant from childhood and that the couple had originated from the same village. Whilst in custody the claimant is said to have stated that he had been introduced to his wife through friends in Glasgow. The claimant had stated that they had married at a registry office in Glasgow and that there had thereafter been a reception in the village restaurant. His wife had stated they had married in a mosque in Govanhill and that the wedding reception was held at the Curry Palace Restaurant.
5. The reasons for not accepting that the claimant's wife was a qualified person related to the quality of evidence with regard to her employment by Maryhill Traders Limited. The claimant is said to have stated in interview that his wife worked at a grocer shop whereas the Secretary of State's case is that Maryhill Traders is a warehouse in Maryhill.
6. The Secretary of State was represented before the First-tier Tribunal. The judge's determination sets out the extent of the cross-examination of the claimant between paragraphs 10 and 14. Likewise the claimant's wife was cross-examined and the detail of her answers are set out in paragraphs 17 and 21. The judge was satisfied that the marriage was genuine and that the claimant's wife was in employment at the time of application and decision and thus exercising her treaty rights according to the Regulations.

7. The challenge by the Secretary of State only relates to the finding on the marriage. In essence it is that the judge failed to give adequate or proper reasoning for his conclusions in the face of the inconsistencies and discrepancies. I am grateful to Mr Young and Mr Shoab for their submissions. Mr Young took me through the determination in some detail, identifying areas in the concluding paragraphs between 24 and 34 which he contended did not show adequate reasoning by the judge. He pointed me to the marriage certificate indicating that the couple had married in Bells Hill rather than at a mosque in Govan. These locations being some fifteen miles apart.
8. For his part, Mr Shoab reminded me of the evidence that had been produced to the judge including photographs of the ceremony in the mosque and at the reception afterwards as well as the couple's tenancy agreement. Mr Young accepted that the marriage had taken place but maintained his contention that it was a sham marriage or, as more accurately described in the regulation., a marriage of convenience.
9. Specifically, reg. 2 a general interpretation of the regulation provides that a spouse does not include-

“a party to a marriage of convenience”.
10. I explained to the parties at the outset of the hearing that in preparing for this case I had had regard to the decision of the Upper Tribunal in *Papajorgji* (EEA spouse - marriage of convenience) [2012] UKUT 38. Included in his observations, the President at [34] stated:

“We agree that the claimant must establish that she is a family member; but in the ordinary case she does this by producing the basic documents set out in the Directive. Where there is no reason to suspect that the claim is fraudulent, or the marriage one of convenience, that is conclusive of the matter. Reg. 12 of the Immigration (European Economic Area) Regulations 2006 does not in terms require the claimant to prove a negative. She must prove that she is married, but the marriage will not avail if it turns to be one of convenience.”
11. The president made further observations on marriages of convenience at [37]:

“It is not enough that the ECO honestly suspects there is a marriage of convenience; the claimant will only be disqualified if it is established that it is. Adverse inferences may be drawn by a claimant's failure to provide data reasonably open to her in the course of the investigation or appeal; but that cannot form the sole or decisive reasons for the conclusion.”
12. The President referred also to the Guidance of the European Commission issued in respect of the Citizens Directive COM 2009 313 2nd July 2009. He

describes this as explicitly placing the burden of proof on the state and invites the state to set out indicative criteria for and against the proposition that the marriage is one of convenience. That material is produced at Appendix A in the decision.

13. I note in particular paragraph 4.2 of the Commission's note

“Regulation 28 defines marriages of convenience for the purposes of the Directive as marriages contracted for the sole purpose of enjoying the right of free movement and residence under the Directive that someone would not have otherwise. A marriage cannot be considered as a marriage of convenience simply because it brings an immigration advantage, or indeed any other advantage. The quality of the relationship is immaterial to the application of Article 35.”

14. I return to the determination.

15. The marriage is addressed from [29] in which the judge accurately observed that the doubt as to the authenticity of the marriage was substantially based upon the lack of knowledge and discrepancies arising out of the interview. He accepted there were some discrepancies between the accounts but noted also that the claimant had been interviewed by Immigration Officers without an interpreter. He has subsequently given evidence that his English was not very good. The judge directed himself at [30]:

“Accordingly therefore the appellant being interviewed in English and not his first language Urdu, I have to be more circumspect in making any conclusions arising out of the discrepancies.”

16. The judge then observed that the claimant and his wife appeared to come across in “quite a credible manner” and in my view correctly approached the discrepancies in the light of that positive conclusion as well as the cautionary aspect that the claimant had been interviewed in a language that was not his first language.

17. I conclude it was properly open to him to observe there was nothing material in the discrepancy between whether the couple married at the mosque or at the registrar's office and I am grateful to Mr Shoaib for explaining to me the procedure. It was also open to the judge to conclude that the dispute regarding where the wedding reception took place to be largely irrelevant. He was entitled to take account of the photographs taken at that reception and at the mosque for the signing. The judge also explained that the couple had been “relatively consistent” in their evidence in relation to the accommodation, although with some minor discrepancies.

18. He then turned his mind to the major discrepancy relating to the wrong date of birth given by the claimant as to his wife and the wrong details of her place of birth and nationality. Mr Young challenged the correctness of

the judge's approach that he was unsure he could place great weight upon these discrepancies. I have no doubt that the judge had those discrepancies in the forefront of his mind but appears to have been persuaded by the oral testimony of the parties. That was a course properly open to him. I should be slow to overturn a decision of the Tribunal on credibility where it has heard the evidence.

19. It is correct that the judge did not address the discrepancy that Mr Young referred to regarding the location of the mosque.
20. Bearing in mind that there is no challenge to the lawfulness of the marriage under Scottish law, I am not persuaded that anything material turns on this. Although the error over the location of the mosque where the marriage had taken place remains unexplained I do not consider in the absence to any challenge to the fact of the marriage, that this aspect is material. In my view the judge correctly approached the task before him which was to evaluate all the evidence and come to a conclusion on the credibility of the parties regarding the marriage. The determination is adequately reasoned, the findings are evidence based and without legal error. Accordingly the appeal by the Secretary of State is dismissed.

Signed

Date 20 August 2014



Upper Tribunal Judge Dawson