



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal no: IA 23628-13

**THE IMMIGRATION ACTS**

At **Field House**  
on **31.03.2014**

Decision signed: **04.04.2014**  
sent out: **08.04.2014**

Before:

Upper Tribunal Judge  
**John FREEMAN**

Between:

**Mohd. DAUD**

appellant

and

**Secretary of State for the Home Department**

respondent

**Representation:**

For the appellant: Mr KIM Manzur-e-Mawla

For the respondent: Mr D Mills

**DETERMINATION AND REASONS**

This is an appeal, by the respondent to the original appeal, against the decision of the First-tier Tribunal (Judge David Bartlett), sitting at Taylor House, he says on 29 October 2012 and 13 January 2013, but clearly meaning the following year in each case, to allow an EEA appeal by a citizen of Pakistan, born 12 April 1984, and married to a citizen of Slovakia. The grounds on which permission was given mainly relate to what are said to have been irrational findings of fact on the part of the judge; but also to the circumstances in which he adjourned the appeal part-heard, for the sponsor to come back from Slovakia to give oral evidence.

2. The judge's approach to the credibility points raised was, as he said at several points in the course of his decision, to accept the evidence of the appellant and sponsor as "... given in a plausible and credible manner – on a balance of probabilities", and the documentary evidence produced (though for the most part only at the second hearing), and so to dispose of the Home Office challenges.

3. While there was nothing wrong in the judge's relying to an extent on his personal impression of the evidence given, as would a jury, unlike a jury any professional judge has to give rational explanations for his findings of fact, especially for those made against the losing party. This particularly applies to findings made (or not, as the case may be) on credibility points raised by that party.
4. The judge carefully listed the credibility points taken against the appellant's credibility, together with the sponsor's, following separate interviews, at paragraphs 6 – 11: obviously he considered them significant enough for that to be worth doing. Perhaps he didn't have to deal with every single point in detail: what he needed to deal with was the substance of the Home Office case against the appellant, and it is worth going through them in order to see whether or not he achieved that. I have given each of them a letter for ease of reference.
5. The background to the interviews was that the appellant had been given an EEA residence card on 25 August 2011, as the sponsor's husband; they had been married here on 21 December 2010. When he returned, after what he says was a short absence in Pakistan, on 18 June 2013, he was given temporary admission only, as it turned out the sponsor was not in this country, but back home in Slovakia. The immigration officer spoke to her there on the number he was given, but with some difficulty communicating with her in English.
6. The immigration officer was not satisfied that the appellant was joining the sponsor here; but gave him three weeks' temporary admission, so she could return and be interviewed. The appellant was fully interviewed on 9 July, following a telephone interview with the sponsor on the 7<sup>th</sup>, at which it was again noted that her English was rather deficient: the appellant speaks no Slovak. There was still no indication as to when the sponsor would be back in this country, and so on 18 July the appellant's residence card was cancelled, and he was refused leave to enter.
7. These are the credibility points taken against the appellant and the sponsor: : his own lack of knowledge at interview can be taken as the subject of each, unless the contrary appears
  - (a) the name of the place where they were married

At paragraph 15 the judge records the appellant as saying he simply couldn't remember this, over two years after the event.
  - (b) when the sponsor was expecting their child

The appellant said November; she said December. Her explanation was that her due date had been the cusp of the month; but (see paragraph 36) "her pregnancy had to be terminated at mid-stage due to complications with her health". The appellant had said on 29 October that the sponsor was still expecting; but (paragraph 14) she had kept her exact due date from him as a surprise. On 13 January (paragraph 28) he described her as having had a miscarriage, on 25 July in Slovakia; when challenged about what he had said the previous time, he said he hadn't known about it till the sponsor got back from there on 5 November. No medical evidence has been produced, though the appellant said on 29 October (see 14) that the sponsor would be able to do this on her return.

- (c) the name of the sponsor's daughter by a previous marriage  
The appellant wasn't cross-examined about this: the sponsor's daughter had been with her in Slovakia all the time she was back there last year, but the immigration officer's notice of refusal suggests that the appellant had described himself as her step-father, having spent some time with both her and the sponsor in this country before.
- (d) the name of the sponsor's mother, who he said he had met  
Again there is no explanation for this, though the appellant wasn't cross-examined about it.
- (e) where the sponsor worked, apart from being a self-employed cleaner in Bradford  
There may be nothing unreasonable in this, given the nature of the sponsor's employment.
- (f) the sponsor not knowing where the appellant worked  
He said at the (Leeds/Bradford) airport, she at a business park in Sharston: the judge was apparently content to accept that the two places weren't far apart.
- (g) the sponsor not being able to give the address where they both lived  
The appellant suggested that perhaps she hadn't been able to understand the interviewer on this: at paragraph 53 the judge refers to pay slips and a P60 produced by the sponsor on 13 January showing her address as the one for which the appellant had produced a tenancy agreement, though he had been unable to produce one on 29 October, and the one produced later showed (see paragraph 31) that it had been generated in 2013.
8. I shall return to the documentary evidence in due course; but the other point on which the judge's decision is challenged was on what he did over the adjournment. First it is said he should not have granted it at all, or not on the state of the evidence before him. The appellant was certainly extremely lucky to get an adjournment on 29 October, when he must have realized, ever since the decision under appeal on 18 July, and even without legal advice, that the sponsor would be an essential witness for him. However, on the information put before the judge, that decision was well within his discretion.
9. A more interesting point on this aspect of the case concerns the state of the appellant's knowledge of his wife's condition on 29 October. His evidence at that time (see the judge's paragraph 14) was that she was pregnant (and her mother sick) and he didn't know when she would be back in this country. As it turned out, however, the sponsor's pregnancy was said to have come to an end on 25 July: while the appellant said he didn't know about that till she came back on 5 November, he cannot have made any serious inquiries about her health and ability to return before the hearing on 29 October, or no doubt she would have told him what had happened.
10. Finally there is the way in which the judge dealt with the evidence at the adjourned hearing. While the Home Office grounds of appeal suggest that he should have warned the appellant not to talk about his evidence to the sponsor during the adjournment, Mr Mills realistically accepted that such a warning, as between husband and wife, would have been

pointless at best: a much better idea would have been for the judge to warn himself that they had by then had plenty of opportunity to match each other's evidence, if that was what they wanted to do. In my view this warning was desirable in general, and essential on points, such as those set out by the judge at paragraph 55, where he found they had specifically corroborated each other.

## CONCLUSIONS

11. As will already be clear, there were two substantial parts of the Home Office case against the appellant, both of which the judge needed to deal with. First there were the credibility points taken by the immigration officer, faced as he was between 18 June and 18 July with an absent Slovak wife with poor English, and a non-Slovak speaking husband who couldn't say when she would be back in this country. Then there were the points which came out only on the second hearing, particularly as to the appellant's state of knowledge about his wife's pregnancy. These might have been considered capable of raising a doubt as to when, if ever, she might have returned to this country, if it had not been for the (no doubt unexpected) invitation from the judge to come back and give evidence at an adjourned hearing.
12. Looking first at the immigration officer's points one by one, and risking the accusation of perpetuating sex stereotypes, there may not have been anything so odd in a man not remembering his wedding venue, especially in a foreign country 2½ years later; or the name of his mother-in-law, or the sponsor's daughter (though, if so, it was rather odd that he should have specifically described her to the immigration officer as his step-daughter. So much for points (a), (c) and (d): as for (e) and (f), about their less than complete knowledge of each other's work-places, it would be wrong to judge this from the standpoint of anyone lucky enough to have a more interesting job than either the appellant or the sponsor are likely to.
13. That leaves the points which are really significant, because they directly concern the appellant and the sponsor's married life and living together. On (b), taken together with what came out at the adjourned hearing (see 9), the appellant's evidence on 29 October, which on 13 January he seemed at first to have forgotten giving, was that the sponsor was still pregnant, and he didn't know when she would be back here. In my view the evidence which he then gave on 13 January, to the effect that she had come back on 5 November and only then told him about her pregnancy's termination in July, was something which at least required some discussion; but it got none in the judge's decision.
14. On (g), the crucial document was the tenancy agreement, which the appellant had been unable to produce on 29 October. While a simple failure of that kind, by an unrepresented party, to produce a document even so important as that, might have been overlooked, once it had been put right after the adjournment, the way in which that was attempted was of much more interest. A tenancy agreement was produced, apparently for accommodation the appellant and the sponsor had occupied together since 2011 - 12; but it came on a form generated in 2013. The judge recorded the appellant's explanation that this was what his landlord had provided him with, after the first hearing. However this too in my view required critical exploration, as to how a landlord should have come to

have no copy of the original agreement, but been prepared to generate a fresh one when it was wanted.

15. The importance of that last deficiency is that the tenancy agreement was not only important in itself, but provided the reference point, with which the judge noted (see paragraph 53) all the sponsor's documents agreed, so far as her address was concerned. These were also produced for the first time at the adjourned hearing: in my view this raises a significant point about the authenticity of the documentary evidence, which might possibly otherwise have justified the judge's overlooking what might politely be described as a degree of vagueness on the appellant's part about when his wife was likely to be back, and whether or not she was expecting.
16. The result is that the judge's credibility findings, though set out with great care, did not satisfactorily deal with important issues before him, and his decision will have to be made again. I have considered retaining it before myself in the Upper Tribunal for that to be done; but I am all too conscious that, inevitably, I have had to say a good deal about the facts already. While I have certainly not made up my mind about them, and have of course not heard from either the appellant or the sponsor myself, that might not be the impression given; and I think it would be much better for this appeal to go back to the First-tier Tribunal for a fresh hearing before another judge, who will be entirely free to make up their own mind about it. In view of Judge Bartlett's very considerable experience, that should be a full-time judge of some seniority.

**Home Office appeal allowed**

**Decision to be re-made, on fresh hearing before a judge of the First-tier Tribunal, not Judge Bartlett**

A handwritten signature in black ink, consisting of stylized, overlapping letters that appear to be 'JBL' followed by a horizontal line.

(a judge of the Upper Tribunal)