



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

Appeal Numbers: IA/32490/2014
IA/33600/2014

THE IMMIGRATION ACTS

Heard at Bradford

Decision & Reasons

On 14th April 2015

Promulgated

On 22nd May 2015

Before

UPPER TRIBUNAL JUDGE D E TAYLOR

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**MUHAMMAD IMRAN
RITA ALEXANDRA BENTO MAGNI
(ANONYMITY DIRECTION NOT MADE)**

Respondents

Representation:

For the Appellant: Mr M Diwnycz, Home Office Presenting Officer
For the Respondents: Mr S Mahmud, Counsel instructed by Platt Halpern Solicitors

DECISION AND REASONS

1. This is the Secretary of State's appeal against the decision of Judge Caswell made following a hearing at Bradford on 17th November 2014.

Background

2. The claimants are husband and wife. The first claimant came to the UK in 2011 and was granted leave as a Tier 4 (General) dependant partner until 9th May 2015. His marriage ended in 2013 and he subsequently met the second claimant who had recently arrived in the UK as an EEA national exercising treaty rights. They had an Islamic marriage in January 2014.
3. On 14th August 2014 they were arrested at Blackburn Registry Office because, in the view of the Secretary of State, the marriage which they were attempting to celebrate was a sham.
4. On 14th August 2014 a notice was served on the second claimant notifying her of her liability to removal on the grounds that she had attempted to enter a sham marriage of convenience with the first claimant, in breach of Regulations 19(3)(c) and 24(2) of the EEA Regulations.
5. On the same day a further decision was made to refuse to issue a registration certificate to the first claimant as confirmation of a right of residence in the UK under EEA law, and on the following day his leave to remain was curtailed.
6. The judge heard oral evidence from both claimants and concluded that they were in a genuine and durable relationship. She allowed the appeals under the Immigration Rules and the EEA Regulations.
7. The Secretary of State sought and was granted permission to appeal on the grounds that it was the first claimant's evidence that the reason he was granted leave under the Immigration Rules as a Tier 4 dependent no longer subsisted, having separated from his original partner and started a new relationship with the other party to the appeal. He was therefore no longer entitled to that leave and it was correctly curtailed. Second, the judge had erred in allowing the appeal under the EEA Regulations in finding that the claimants were entitled to remain in the UK because she had failed to consider whether the second claimant was a qualified person exercising treaty rights in the UK.

Findings and Conclusions

8. Both parties agreed that the grounds are misconceived. There seems to have been some confusion in relation to this matter although Mr Diwnycz made it clear that there was no challenge to the Immigration Judge's primary finding that the claimants are living together as husband and wife and expecting their first child together.
9. So far as the second claimant is concerned, given that the judge found that she had not attempted to enter a sham marriage there is clearly no basis for finding that she had breached Regulations 19(3)(c) or 24(2).
10. Second, it is unclear to me whether an application was ever made by the first claimant for a residence card. If there had been, the Secretary of

State has a discretion as to whether one should be issued and would only do so if the second claimant was exercising treaty rights.

- 11.** The judge's decision is not, as characterised in the grounds, a decision that the claimants are entitled to remain in the UK. It is a decision that the basis for the decision under Regulations 19 and 24 was wrong and, if an application for a registration certificate on the basis of the marriage was refused because the Secretary of State believed that the marriage was a sham, that belief was erroneous. Clearly it does not mean that a residence card will necessarily be issued, that being dependent upon whether the second claimant is exercising treaty rights.
- 12.** So far as the Immigration Rules are concerned, the basis for the curtailment decision, as described in the reasons for refusal, was not that the first claimant no longer satisfies the requirements of the Immigration Rules on the basis of his previous relationship, which is undoubtedly correct, but that he was attempting to enter a sham marriage. On the basis of the unchallenged findings, the Secretary of State was wrong in that belief.
- 13.** There is therefore no error in the judge concluding that the appeal should be allowed under the Immigration Rules. Of course, as Mr Mahmud accepted, that does not necessarily assist the first claimant because he cannot in fact satisfy the requirements of the Immigration Rules. The fact that his appeal was allowed will not result in any leave being granted to him, under the Rules, although he may be entitled to a residence card under the EEA Regulations if his wife is a qualified person.

Notice of Decision

- 14.** The original judge's decision will stand.

No anonymity direction is made.

Signed

Date

Upper Tribunal Judge Taylor