



Upper Tier Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/44494/2014

THE IMMIGRATION ACTS

Heard at Manchester
On 20 May 2015

Determination Promulgated
On 27 May 2015

Before

Deputy Upper Tribunal Judge Pickup

Between

Mustafa Kelepircioglu
[No anonymity direction made]

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:

For the appellant: Mr R Jesurum, instructed by Kinas Solicitors
For the respondent: Mr A McVeety, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant, Mustafa Kelepircioglu, date of birth 15.5.81, is a citizen of Turkey.
2. This is his appeal against the decision of First-tier Tribunal Judge Parker promulgated 28.1.15, dismissing his appeal against the decision of the respondent to refuse his application made on 3.7.14 for an EEA Residence Card as confirmation of a right to reside in the UK, pursuant to the Immigration (EEA) Regulations 2006. The Judge heard the appeal on 14.1.15.

3. First-tier Tribunal Judge Mailer granted permission to appeal on 12.3.15.
4. Thus the matter came before me on 20.5.15 as an appeal in the Upper Tribunal.

Error of Law

5. For the reasons set out herein, I find no material error of law in the making of the decision of the First-tier Tribunal such as to require the decision of Judge Parker to be set aside.
6. The relevant background can be summarised briefly as follows. The appellant who first came to the UK in 2009 as a student has twice previously been refused leave to remain, in 2010 and 2011 and was served as an overstayer on 28.10.13. The application for an EEA Residence Card was decided following a marriage interview on 28.10.14.
7. The application was refused because the Secretary of State reached the conclusion, in the light of the discrepancies that came to light during the marriage interview, that the marriage of the appellant with Serife Demir is a marriage of convenience, arranged solely for the purpose of enabling the appellant to remain in the UK. The refusal decision sets out a number of the more significant discrepancies. The Secretary of State is not required to recognise a marriage of convenience and the provisions of the Regulations do not apply to a marriage of convenience. A marriage of convenience is one entered into solely for immigration purposes.
8. Judge Parker reached the conclusion at §24 of the decision that “the discrepancies regarding their time together are so fundamental that challenges other factors such as alleged cohabitation I would find that, in all the circumstances, the marriage had no substance and this is a marriage of convenience.”
9. In granting permission to appeal, Judge Mailer considered it arguable that the judge may not have considered the evidence of cohabitation adduced by the appellant, and may have overemphasised the significance of the discrepancies. However, as set out in the Rule 24 response dated 24.3.15, the grounds of application for permission to appeal are in reality no more than an attack on the weight given by the judge to the various parts of the evidence, where weight is a matter for the judge to determine. The nature and extent of the discrepancies in the marriage interview are so obviously significant as to outweigh any countervailing evidence in favour of the appellant, including the evidence of cohabitation. Further it is not inconsistent with a sham marriage for there also to be an element of cohabitation. The test of a marriage of convenience is not cohabitation or an intention to cohabit. In the light of the inconsistencies, some of which are summarised in the decision of the First-tier Tribunal between §18 and §24, it is difficult to see how the judge could have reached any other conclusion than that this was from its inception a marriage of convenience. As Mr Jesurum accepted in his oral submissions, the discrepancies disclosed in the marriage interview discharged the evidential burden on the Secretary of State so that the burden shifted to the appellant to demonstrate on the balance of probabilities that the marriage is not a marriage of convenience.

10. It is clear from the decision of the First-tier Tribunal that the judge took into account the appellant and his spouse's witness statements attempting to explain the marriage interview discrepancies; the photographic evidence; the evidence of cohabitation; and the witnesses called on their behalf at the appeal hearing. However, the judge reached the conclusion at 19 that there are "vast differences between them at interview and I have only touched upon some of them." For example, the judge highlighted at §18 significant discrepancies regarding their first meeting; the engagement ring; the night before the wedding; where they lived before the wedding; who were the witnesses; and how they got to the wedding. They were even inconsistent as to where they stayed the night before the marriage interview in Liverpool. I can only agree with the judge's conclusion at §22, which cannot be described as either irrational or perverse, that one would expect the parties to a genuine marriage to know where they each spent the night before the wedding and interview; how they got to the wedding; and the wedding night.
11. Having considered the evidence of the various witnesses, I can only agree with the judge's view at §22 that the evidence from their own knowledge was limited. Some of the statements are quite formulaic and rather brief. In the main they speak of their knowledge of the appellant and say little about the sponsor. Attempts by Mr Jesurum to criticise the findings of the judge and to rely on explanations for discrepancies, such as confusion and imperfect recollection, together with his review of the witness statements adduced on the appellant's behalf, were no more than an attempt to reopen the issues in the appeal and a disagreement with the judge's findings, for which I find cogent reasons were given. Mr Jesurum did not represent the appellant at the appeal and was not in any position of strength to comment on the judge's assessment of the oral evidence. I find the judge's decision neither irrational nor perverse, and one fully open to the Tribunal on the evidence.
12. Article 8 ECHR was not relied on at the appeal and on the judge's findings any article 8 ECHR assessment outside the Regulations would have found insufficient family life between the appellant and the sponsor to engage article 8 at all. As the refusal decision explained, the Secretary of State has not considered article 8 and if the appellant wishes to make an application for leave to remain on the basis of private and/or family life, he must make a separate chargeable application on the specified form.

Conclusions:

13. The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law such that the decision should be set aside.

I do not set aside the decision.

The decision of the First-tier Tribunal stands and the appeal remains dismissed.



Signed

Deputy Upper Tribunal Judge Pickup

Deputy Upper Tribunal Judge Pickup

Anonymity

I have considered whether any parties require the protection of any anonymity direction. No submissions were made on the issue. The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

Given the circumstances, I make no anonymity order.

Fee Award

Note: this is not part of the determination.

In the light of my decision, I have considered whether to make a fee award (rule 23A (costs) of the Asylum and Immigration Tribunal (Procedure) Rules 2005 and section 12(4)(a) of the Tribunals, Courts and Enforcement Act 2007).

I have had regard to the Joint Presidential Guidance Note: Fee Awards in Immigration Appeals (December 2011).

I make no fee award.

Reasons: the appeal has been dismissed and thus there can be no fee award.



Signed

Deputy Upper Tribunal Judge Pickup