



Upper Tier Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/46876/2014

THE IMMIGRATION ACTS

Heard at Manchester
On 8 October 2015

Decision and Reasons Promulgated
On 15 October 2015

Before

Deputy Upper Tribunal Judge Pickup

Between

Asad Shahbaz

[No anonymity direction made]

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:

For the appellant:

Mr M Rayaz, instructed by Rasools Law

For the respondent:

Mr G Harrison, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant, Asad Shahbaz, date of birth 15.12.93, is a citizen of Pakistan.
2. This is his appeal against the decision of First-tier Tribunal Judge Edwards promulgated 10.3.15, dismissing his appeal against the decision of the Secretary of State to refuse his application for an EEA Residence Card as confirmation of a right to reside in the UK as the spouse of an EEA national exercising Treaty rights, pursuant to the Immigration (EEA) Regulations 2006. The Judge heard the appeal on 6.3.15.

3. First-tier Tribunal Judge Davidge refused permission to appeal on 11.5.15. However, when the application was renewed to the Upper Tribunal, Upper Tribunal Judge Goldstein granted permission to appeal on 8.7.15.
4. Thus the matter came before me on 8.10.15 as an appeal in the Upper Tribunal.

Error of Law

5. For the reasons set out herein I find that there was no material error of law in the making of the decision of the First-tier Tribunal such as to required the decision of Judge Edwards to be set aside.
6. I note that there are a number of errors in the grant of permission. At §3 Judge Goldstein found arguable merit in the submission that the First-tier Tribunal Judge's finding that the marriage was one of convenience was perverse or irrational "when there was evidence before the First-tier Tribunal Judge that the appellant was pregnant and as to the appellant's paternity." First, it was not the male appellant who was pregnant, nor was the appellant's paternity in issue, but rather the paternity of the then unborn child. Second, it is not clear that there was any evidence of paternity at all. As Mr Rayaz suggested, it would be difficult to have evidence of paternity when the child was not yet born.
7. However, on the core finding of the decision, I find no error of law in the conclusion that the marriage was one of convenience. Although Judge Edwards did not specifically refer to Papajorgji (EEA spouse - marriage of convenience) Greece [2012] UKUT 00038 (IAC), at §9 the judge pointed out that it was for the Secretary of State to establish at least a prima facie case that the marriage was one of convenience. Thereafter, the burden falls on the appellant on the balance of probabilities to demonstrate that it is not a marriage of convenience.
8. I reject the submission of Mr Rayaz that at §23 the judge was propounding a perverse and new principle of law in the comment, "I note the fact that the sponsor is pregnant, allegedly by the appellant. That really adds little. If a marriage is one of convenience, there can also be children of convenience." The comment was no more than the obvious, that the fact that a child was expected is not by itself determinative of a genuine or subsisting marriage. As the judge stated, and bearing in mind there was no evidence of paternity at the time, it added little.
9. I also reject the submission that the judge failed to have regard to all the relevant evidence in the case. Mr Rayaz relied on evidence of different addresses, photographs and a marriage certificate. These were matters considered by the judge. For example, at §15 the judge referred to the evidence of different addresses, but noted that there was limited evidence in joint names. At §22 the judge summarised the quality of the evidence as "lamentably sketchy. There is little or nothing to show a joint establishment."
10. Mr Rayaz suggested that there was a mistake of fact at §15 when the judge referred to the sponsor's evidence that two other people lived at 325 [-], Bolton, adding, "The

sponsor said one of them was a relative of the appellant, but she did not know their names." At §21 the judge found the evidence of the appellant and the sponsor unsatisfactory, and referred to discrepancies between them, adding, "I do not accept Mr Rayaz's point that it would be understandable for the sponsor not to know the names her flat-mates, particularly when one was apparently a relative of her husband." Mr Rayaz disputed that the sponsor had said in evidence that one of the other occupants was a relative whose name she did not know. However, that is entirely consistent with the judge's handwritten notes forming the record of proceedings. If Mr Rayaz wanted to challenge the accuracy, he should have produced better evidence than merely his assertion in submissions to me.

11. Much of Mr Rayaz's submissions amounted to no more than a disagreement with the findings and conclusions of the judge, suggesting to me that more weight should have been given to the evidence favouring the appellant. However, weight is a matter for the judge to assess, in the round in the context of the evidence as a whole. I find that although the decision is relatively brief, there is no evidence that the decision was not made after taking into account all of the evidence in the round. The grounds and submissions are simply disagreements and do not disclose any material error of law. There is nothing in the matters submitted to me to demonstrate that the decision was perverse or irrational.
12. In the circumstances, and for the reasons stated, there is no material error in the making of Judge Edwards' decision.

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

Dated

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. 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.

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

I make no fee award.

Reasons: There is no merit in the grounds of appeal against the decision of the First-tier Tribunal and the appeal remains dismissed.



Signed

Deputy Upper Tribunal Judge Pickup

Dated