



**Upper Tribunal
(Immigration and Asylum Chamber)
IA/28234/2014**

Appeal Number:

THE IMMIGRATION ACTS

**Heard at Field House
On 14 March 2016**

**Determination Promulgated
On 20 May 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE ARCHER

Between

MR KAMRAN KHADIM

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: No attendance

For the Respondent: Mr Seb Kandola, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This appeal is not subject to an anonymity order by the First-tier Tribunal pursuant to rule 13 of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014. Neither party has invited me to make an anonymity order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/2698) and I have not done so.
2. The appellant appeals against the decision of the First-tier Tribunal (Judge Liddington) dismissing the appellant's appeal against a decision taken on 7 July 2014 to refuse to issue a residence card under the Immigration (EEA) Regulations 2006 ("the Regulations") as a spouse of an EEA national.

Introduction

3. The appellant is a citizen of Pakistan born on 4 November 1981. He is married to VG, a citizen of Lithuania born in 1991. The appellant previously entered the UK as a Tier 4 student with leave until 28 February 2014 but his leave was curtailed on 15 February 2014 when his college lost its sponsor licence. The current application was made on 30 January 2014 after the parties were married on 15 September 2013.
4. The Secretary of State accepted that the parties were married but the marriage interviews disclosed significant discrepancies. The relationship was a marriage of convenience and therefore fell outside the Regulations.

The Appeal

5. The appellant appealed to the First-tier Tribunal and attended an oral hearing at Taylor House on 28 August 2015. He was represented by Mr Raja, Solicitor. The First-tier Tribunal found that the appellant did make the statements contained in the summary of the marriage interviews. The witness statements failed to address the discrepancies. VG did not attend the hearing.

The Appeal to the Upper Tribunal

6. The appellant sought permission to appeal to the Upper Tribunal on the basis that the First-tier Tribunal had erred in law by not requesting the full interview and it was unduly harsh to conclude that the marriage was one of convenience based on just 15 questions from a total of over 100. Numerous requests had been made for a copy of the interview notes in full. The pages provided were only those showing inconsistent answers. The appellant and VG had been married for 5 months before his leave was curtailed and it was unfair to assume that the appellant knew that the college licence had been revoked in late 2012.
7. Permission to appeal was granted by First-tier Tribunal Judge Saffer on 1 February 2016 on the basis that it was arguable that the judge had acted unfairly in finding against the appellant on the basis of the marriage interviews when the wholly inadequate reason given for not faxing them to the Tribunal was that they were too long. The second ground was also arguable.
8. Thus, the appeal came before me. The appellant and his solicitors were sent notice of the hearing in the Upper Tribunal on 18 February 2016. They failed to attend the hearing and no reason has been given for their non-attendance. I decided to proceed to hear the appeal under rule 38 of the Tribunal Procedure (Upper Tribunal) Rules 2008 on the basis that the parties had been notified of the hearing and that it was in the interests of justice to proceed in the absence of the appellant and his representative.

Discussion

9. Mr Kandola submitted that the judge was entitled to proceed without the full interview records but with a summary. The judge was right in law to continue because the appellant accepted the discrepancies; paragraph 16 of the decision. There is no realistic prospect that the judge would have come to a different conclusion given that the EEA sponsor was not present. That was indicative of a sham marriage. The parties have also failed to attend the Upper Tribunal hearing. There is nothing to suggest that this was a genuine marriage. The appeal fell to be dismissed.
10. The judge found at paragraph 15 of the decision that the interview summary gave considerable detail about the discrepancies that arose in respect of the first meeting, first and second dates of the appellant and VG, their ages and religion, details of the engagement proposal, the surroundings of the address where they claim to live together, travel to the wedding venue and details of the wedding plus what they had done on memorable dates and the previous Saturday. At paragraph 16, the judge found that the appellant confirmed in oral evidence that the summary was accurate. At paragraph 17, the judge was fully aware that there were some 15 wrong or contradictory answers out of over 100 in total. The appellant's case was not based upon unreliability of the summary but upon the low proportion of inconsistent answers and the fact that the appellant was very tired during the interview.
11. In the particular circumstances of this appeal, I find that the judge was entitled to consider the interview summary and the findings made were properly open to the judge. The absence of VG at the oral hearing was a further telling factor against the appellant. I find that the judge was further entitled to take into account the uncertainty of the appellant's immigration status as at the date of the marriage on 15 September 2013. The judge considered the appellant's submission that the fact that the appellant was granted 60 days to find a new college on 17 December 2013 indicated that the marriage was genuine because there was no attempt prior to then to rely upon the marriage. However, the judge was not obliged to accept that submission and the finding at paragraph 20 of the decision that the appellant must have known by the date of the marriage that he was no longer attending college was properly open to the judge on the available evidence. No material errors of law arise.
12. Thus, the First-tier Tribunal's decision to dismiss the appellant's appeal under the Regulations did not involve the making of an error of law and its decision stands.

Decision

13. Consequently, I dismiss the appeal of the appellant.

Signed

Date 18 May 2016

A handwritten signature in black ink, appearing to read 'C. Archer', written in a cursive style.

Deputy Upper Tribunal Judge Archer