



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/44422/2014

THE IMMIGRATION ACTS

Heard at Stoke, Bennett House
On 31 March 2016
Prepared 31 March 2016

Decision & Reasons Promulgated
On 17 May 2016

Before

DEPUTY UPPER TRIBUNAL JUDGE DAVEY

Between

**M T
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Sarwar, Counsel instructed by Sanctuary Law
For the Respondent: Mr A McVeety, Senior Presenting Officer

DECISION AND REASONS

1. The Appellant appealed against the Respondent's decision to refuse a residence card on the basis of Regulations 2 and 6 of the Immigration (EEA) Regulations 2006 (the

2006 Regulations) on 20 October 2014. The matter came before First-tier Tribunal Judge Watson who, on 27 May 2015, dismissed the Appellant's appeal on the grounds that he had failed to establish that it was a genuine marriage which had been entered into, or that the Sponsor was a qualified person exercising Treaty rights in the United Kingdom.

2. Permission to appeal that decision [D] was given by Upper Tribunal Judge Taylor on 10 October 2015 and the Respondent made a Rule 24 response on 2 November 2015.
3. The differences between the parties are clear and do not need repeating save to say they centre around the issue of whether the judge was entitled to conclude, and gave adequate reasons to conclude, that there was a sham marriage between the Appellant and the lady with whom he lived and the mother of their child, a Czech national, in the United Kingdom. Secondly, whether or not the evidence was sufficient, as an issue which had been raised in the Reasons for Refusal letter, to show that the Sponsor was employed at the material date of the hearing and therefore, on the evidence, exercising Treaty rights. I do not need to repeat the extensive arguments by reference to the evidence that was cited to the judge. However, of particular concern is that at [D26] of the decision where the judge said:

"I find that the witness statements of the friends included in the evidence add very little to the case, other than confirming that a marriage ceremony took place, which I accept. I give little weight to the friends' assessment of the relationship."

4. This was a matter of concern not least because the judge gave no reasons why he ascribed little weight to the evidence of their assessment of the relationship: In the statement of MRC (AD page 7-8) he identified the proximity of his relationship to the Appellant and Sponsor and expressed the view:

“The appellant and his wife seem really happy together. As I live with them I can see that they are in a genuine marriage. They both share care for their child. I work as a chef in the evenings so I see them in the house together.”

He goes on to express his belief:

“...the relationship between M and L is genuine and subsisting.”

5. The statement of a British national woman, who attended the civil ceremony and the religious marriage of the Appellant and the Sponsor and stated that she had known the Sponsor since the marriage. She stated:

- “3. We often visit the appellant and his wife at their home in Nottingham. I believe their relationship is completely genuine. They often visit us at our house in Nottingham. We eat together. We have parties together.

4. My husband and I often visit the appellant, his wife and child at their house in Nottingham. They have a good relationship. They are really good friends as well as partners.

5. The appellant’s wife’s English is still improving so the appellant interprets but she seems very happy. They have a beautiful son. The wife likes eating pasta and rice and sometimes Asian food. She also likes pizzas. They seem really happy.

6. The wife is a very caring mother to her son.”

6. Similarly, the statement of S A identified his knowledge of the Appellant over a number of years, attendance at the Appellant and Sponsor’s civil ceremony and stated at paragraph 3:

- “3. I believe that his relationship with his wife is completely genuine. They often visit my house in Nottingham. We eat together. We have parties together. We are both taxi drivers in the same company.
4. My wife and I often visit the appellant, his wife and child at their house in Nottingham. They have a completely normal and functioning relationship.”

He goes on to speak of the Sponsor’s improving her English and the son which they enjoy raising together.

7. It seemed to me that since these three witnesses were not impugned by the judge’s decision, in terms of the reliability of their recollection or their truthfulness, it needed a proper explanation as to why their evidence which, looking at the evidence in the round as the judge should have done, was so lightly dismissed with no material reasons by the judge. They are plainly, on the face of it external witnesses who speak to longish knowledge of the Appellant and/or Sponsor let alone their family life together. I concluded that whilst the judge can, as he properly did, identify a number of oddities about the initiation of the relationship between the Appellant and the Sponsor, nevertheless could not properly, unless better reasoned, simply dismiss the evidence. Whilst the judge gave little weight to it on any analysis with regard to the relationship, he makes no reference whatsoever to that evidence. I find that that is a material error of law. It seemed also that the issue was not raised by the judge with the Appellant’s representative at the hearing and that was insufficient in the light of the case of R (Iran) [2005] EWCA Civ 982.
8. Secondly, in relation to the issue of the Sponsor’s employment it was clear as the judge’s note properly recorded, that when the Appellant was asked about the level of wages she received, confirmed that the wages were paid at a rate of £7.20 an hour and, even if that is said to be a mistake the interpreter made, the representative, Ms Mullen at the hearing did not notice the point. The fact was that the payslip, as Ms

Mullen could plainly have seen, stated the hourly rate at £7.50. It may be as is now explained the case that the Sponsor was explaining the £7.20 as being a typographical error engaging in fact her monthly earnings of £720 odd. The difficulty with this explanation now given is that it was not raised in the grounds of appeal settled by Ms Mullen in September 2015, where she recited paragraphs 30 and 31 of the judge's decision [D]: Yet the grounds do not challenge that as a fact being either the evidence given nor did they assert that there was an error in the judge relying upon that answer nor that there was an interpretation failure which led to a misunderstanding the evidence being provided at the time.

9. Although a great deal of time and argument was interestingly taken on the issue of whether the Sponsor has been self-employed, as Mr McVeety correctly identified, whilst that may go to an issue of credibility it does not go to the issue as to whether or not she was in employment, exercising Treaty rights. It seemed to me that the evidence was to a degree poorly assembled to present that past historic position. It is clear that the grounds, again settled by Ms Mullen, simply do not get to grips with the problem identified in D31 which was the rate of pay specified in the payslip produced to evidence the Sponsor's current employment. Nevertheless, the judge did have a payslip whose credibility and reliability was not challenged which showed that the Sponsor was earning £724 per month. To that extent, whether or not the error made in the evidence of the Sponsor is material, the judge did not actually address the fact that she was, on the face of the document which was not rejected as unreliable, earning £720 a month. On the face of it Mr McVeety's argument is attractive about the issue as to the reliability of the interpretation but it seemed to me that that sits as part of the evidence relating to the apparently reliable payslip. Accordingly, it may be a thin point, but it did seem to me that the judge's reasoning is ultimately driven by the discrepancy rather than a proper recognition of the actual pay received. It is also clear that the payslip shows payment was in cash and it was said to be, and it is, by no means an extraordinary arrangement, that the cash was banked. Therefore the reference to earnings being in the bank, the judge's note was by no means unambiguous as to whether it was really an assertion that the money

was being paid by the employer direct into the bank or the money ended up in the bank, as the Sponsor says, as paid in by her.

10. Accordingly, I was satisfied that these two matters bearing in mind the age of their child, the fact that they are bringing the child up together raised real concerns about the assessment as to whether it was a sham marriage. If the view is taken that it was not a properly entered into marriage that there may well be another basis under the 2006 Regulations for the Appellant to remain but that is for another day.

DECISION

11. The Original Tribunal's decision can not stand and the matter will be returned to the First-tier Tribunal to be re-made in accordance with the law.

DIRECTIONS

- (1) The appeal is to be re-listed in Nottingham, not before First-tier Tribunal Judge Watson.
- (2) Time estimate - 2 hours.
- (3) Interpreter required - Czech language.
- (4) Any further documents relied upon or relating to the issue of employment of the Sponsor to be provided to the First-tier Tribunal (IAC) and to the Home Office not later than ten working days before the date of hearing in the First-tier Tribunal.

ANONYMITY

12. In light of the fact that the Appellant has a young child I find it appropriate for an anonymity order to be made.

**DIRECTION REGARDING ANONYMITY - RULE 14 OF THE TRIBUNAL
PROCEDURE (UPPER TRIBUNAL) RULES 2008**

Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date 4 May2016

Deputy Upper Tribunal Judge Davey