



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

Appeal Number: IA/49817/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 27 January 2016**

**Decision & Reasons Promulgated
On 11 February 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE NORTON-TAYLOR

Between

**TARANJIT SINGH TOOR
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr S Khan, Solicitor from SMK Solicitors

For the Respondent: Mr S Kotas, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge MacKenzie (the judge), promulgated on 24 July 2015, in which he dismissed the Appellant's appeal. That appeal was against the Respondent's decision of 25 November 2014, refusing to issue a residence card under the Immigration (European Economic Area) Regulations 2006 (the Regulations).
2. The Appellant had married a Slovak national on 7 May 2014. An application for a residence card was then lodged on 21 August 2014. The

basis of the Respondent's refusal was clear: she asserted that the marriage was one of convenience only, and that therefore the Appellant was not the spouse of an EEA national. This conclusion was based in part upon answers given by the Appellant and his wife to an Immigration Officer on 29 April 2014. In addition, DNA evidence had shown that the Appellant was not the biological father of his wife's child.

The judge's decision

3. By the time of the hearing the Appellant's marriage to the EEA national had broken down, although there had been no divorce. The judge directed herself to Papajorgji (EEA spouse - marriage of convenience) Greece [2012] UKUT 00038 (IAC). She found that the Respondent had shown the existence of reasonable suspicion in relation to the marriage of convenience issue. She then found that the marriage was in fact one of convenience only. The core findings and reasons are contained in paragraphs 22-30 of the decision.
4. The first point taken against the Appellant related to the answers allegedly given at the interviews. There was no record of the interviews before the judge. She stated that, "while it would have been helpful to have more detailed notes of the marriage interviews, I attach weight to the conclusion reached by Immigration Officer Nixon that the [sic] it did not appear that the parties knew each other well." She found it to be of significance that there was a discrepancy in the evidence (contained in the interviews) about when the Appellant had travelled to Stoke for the wedding.
5. In paragraph 24 the judge makes an adverse finding based upon different addresses stated in the evidence. In paragraph 25 the judge finds against the Appellant in respect of evidence purporting to have come from his landlord. Paragraphs 26-30 relate to the wife's child. The judge did not accept the Appellant's account of the circumstances surrounding this important issue.
6. The judge then goes on and considers Article 8.

The grounds of appeal, grant of permission and rule 24 response

7. The grounds assert that the judge was wrong to have placed weight on the Immigration Officer's evidence when the notes of the interviews were not themselves in evidence. It is also said that the judge erred in rejecting the landlord's evidence. Finally it is said that the judge erred in respect of Article 8.
8. Permission to appeal was granted by First-tier Tribunal Judge Fisher on 20 November 2015.
9. A rule 24 response from the Respondent was received by the Upper Tribunal on 3 December 2015.

The hearing before me

10. Mr Khan relied on the grounds of appeal. He confirmed that no adjournment application had been made to the judge as regards the

absence of the interview notes. The interviews had, he told me, been carried out at the Registry Office in Stoke. The Appellant had then been detained and released the following day. He had then been allowed to marry the following week.

11. Mr Kotas highlighted the failure to seek an adjournment before the judge. Even if there was an error, it was immaterial in light of the other findings.

Decision on error of law

12. I find that that there are no material errors of law in the judge's decision.
13. I do not know whether or not the decision in Miah (interview's comments: disclosure; fairness) [2014] UKUT 00515 (IAC) was brought to the attention of judge. I rather suspect not. In any event, the President's conclusions in Miah are clear: the right to fair hearing requires an appellant to know the case against him, and this will involve disclosure of the interviewer's comments (contained in form ICV.4605).
14. In the present case the opinions/comments of the Immigration Officer were in evidence (form IS.126 at I1 of the Respondent's bundle). Notes of the interviews were not. This fact might seem to render proceedings unfair to the Appellant.
15. However, in my view what appears to be an error by the judge is not actually an error at all, or in any event is not material to the outcome of the appeal. My reasons for so finding are as follows.
16. The Appellant was fully aware of the case against him as regards answers given in the interviews and those relied upon in the case against him. The reasons for refusal letter clearly states that the evidence relating to the timing of the journey to Stoke was inconsistent. On appeal, the judge only specifically relies on precisely the same point when finding against the Appellant in paragraph 23. There is no particularised allusion to other, non-disclosed answers. Further, having looked at the Appellant's evidence before the judge (including that given orally), I can see nothing that deals with the particular point concerning the journey. As far as I can see there was nothing to rebut to the Respondent's assertion.
17. I would add that Mr Khan has not indicated that there might have been favourable evidence contained in the undisclosed interview.
18. In light of the above, there was no substantive unfairness to the Appellant and the judge was entitled to find as he did.
19. Those seeking to challenge decisions of the First-tier Tribunal need to establish the particulars of their case, with careful reference to what is actually said by the relevant judge (and often the first instance decision-maker as well). This has simply not been achieved in the present appeal.
20. If I were wrong about the existence of any error, it is not material to the outcome of the appeal when the decision is read as a whole. The judge's conclusions in paragraph 24 have not been challenged and were plainly open to him. Although there a challenge to paragraph 25, this has no

merit. The judge was fully entitled to attach little or no weight to the landlord's evidence for the reasons given.

21. There is no specific challenge to the judge's findings on the child issue as it relates to the marriage of convenience. In my view the judge has provided adequate reasons in support of the adverse findings stated.
22. When the sustainable findings in paragraphs 24-30 are taken into account, any error in paragraph 23 is rendered immaterial.
23. Mr Khan suggested at the hearing that the judge might have got the burden of proof wrong. This point was not in the grounds of appeal and could not be raised during the hearing. In any event, whilst paragraph 21 may give rise to a concern (the judge appearing to place the legal burden upon the Appellant), a proper reading of paragraph 20 and, importantly, paragraph 31, together with the express consideration of Papajorgji, go to show that the judge directed himself correctly.
24. There is nothing in the Article 8 point because of course the judge had no jurisdiction to consider it in the first place (see TY (Sri Lanka) [2015] EWCA Civ 1233).

Anonymity

25. No direction has been sought and none is appropriate.

Decision

The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.

The Appellant's appeal to the Upper Tribunal is dismissed.

The decision of the First-tier Tribunal stands.

Signed

Date: 8 February 2016

H B Norton-Taylor
Deputy Judge of the Upper Tribunal

TO THE RESPONDENT **FEE AWARD**

I have dismissed the appeal and therefore there can be no fee award.

Signed

Date: 8 February 2016

Judge H B Norton-Taylor
Deputy Judge of the Upper Tribunal