



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-001205
FtT No: EU/53199/2023
LE/01085/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 24th October 2024

Before

UPPER TRIBUNAL JUDGE LANE

Between

Secretary of State for the Home Department_

Appellant

and

LEONARD BARDHI

Respondent

Representation:

For the Appellant: Mr Diwnycz, Senior Presenting Officer
For the Respondent: Mr Hassan

Heard at Phoenix House (Bradford) on 10 June 2024

DECISION AND REASONS

1. I shall refer to the appellant as the respondent and to the respondent as the appellant as they respectively appeared before the First-tier Tribunal. The appellant, who was born on 5 March 1999 is a citizen of Albania. He appealed to the First-tier Tribunal against the respondent's decision dated 5th of May 2023 refusing his application for settled or pre-settled status under Appendix EU. The First-tier Tribunal allowed the appeal on the papers. The Secretary of State now appeals to the Upper Tribunal.
2. The respondent refused the application on the basis that the appellant's marriage is one of convenience. The First-tier Tribunal found that the marriage was genuine and subsisting. The Secretary of State challenges the decision on the ground that the judge has failed to give adequate reasons for his decision.

3. Mr Diwnycz, for the Secretary of State, relied on the grounds of appeal. Mr Hassan, who appeared for the appellant at the Upper Tribunal initial hearing, submitted that the failure of the United Kingdom sponsor to provide a witness statement (the subject of complain in the grounds of appeal) was not relevant given that the appellant and sponsor had answered more than 200 questions at interview with the respondent's officer and that the judge had found that most of their answers had been consistent with each other.
4. One of the inconsistencies cited in the grounds of appeal concerns the fact that the appellant had been unaware that his wife had given birth to a child by another man. The judge [21] found that: 'The Appellant explained in his witness statement that the Sponsor had initially feared telling him about her other child through fear that he would not accept that she has a child by another man. As time passed, the Appellant explained how the Sponsor found it harder to reveal the truth. This was why she continued to try to conceal this during the marriage interview. She eventually told the Appellant the truth. Whilst this does appear to be a significant secret to keep from the Appellant, it is also not implausible.' In my opinion, the judge's finding is not wrong in law; the judge has addressed the inconsistency and has given a reason for accepting the appellant's explanation. Another judge may have reached a different finding but that is not the point. The judge's reasoning is adequate.
5. However, that is not the case with an even more significant inconsistency between the evidence of the appellant and sponsor. The grounds at [15-16] state: 'At Q 193-212 the sponsor is asked about the birth of her second child, Uliana DOB 09 October 2020. This is the child she has had with the appellant. The sponsor provides clear and direct answers confirming at Q 209-211 that she gave birth by caesarean section, and also that her first child was also born by caesarean section ... The appellant is questioned about the birth of his daughter at Q122-132 of his interview and provides clear and direct responses that the birth was "natural" and further that he witnessed the birth personally. When asked whether his wife required any surgery he responded 'She didn't need surgery she had a natural birth''.
6. The judge's decision is completely silent as regards the circumstances of the child's birth. Mr Hassan submitted that the judge's failure to deal with this inconsistency may be explained by the fact that the circumstances of the birth are not specifically referred to in the refusal letter. However, that submission ignores the fact that the Secretary of State had concluded that the marriage was not genuine because the appellant and sponsor had given discrepant answers; it was not necessary for each and every discrepancy to be detailed whereas it was, in my opinion,

necessary for the judge, notwithstanding that this was a paper appeal, to consider the interview record carefully. The discrepancy concerning the child's birth described in the grounds is glaring; indeed, it is difficult to imagine what possible credible explanation for it could be advanced by the appellant. I am not satisfied that the judge has considered the interview record with sufficient care; had he done so, I find that he would have been bound to address the discrepancy regarding the birth in his decision. In the circumstances, I find that the judge has erred in law such that his decision falls to be set aside. The appeal should be returned to the First-tier Tribunal for a fresh fact-finding exercise to be carried out. I direct that there shall be a face to face hearing *de novo* in the First-tier Tribunal which the appellant and sponsor should attend. Any additional evidence which either party wishes to adduce must be filed at the First-tier Tribunal and served on the other party no less than 10 days prior to the next hearing.

Notice of Decision

The decision of the First-tier Tribunal is set aside. None of the findings of fact shall stand. The appeal is returned to the First-tier Tribunal for that Tribunal to remake the decision following a face to face hearing *de novo*.

C. N. Lane

Judge of the Upper Tribunal
Immigration and Asylum Chamber

Dated: 2 September 2024