



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

Appeal Number: IA/12018/2014

**THE IMMIGRATION ACTS**

Heard at Manchester  
On 4<sup>th</sup> February 2015

Determination Promulgated  
On 10<sup>th</sup> March 2015

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE LEVER**

**Between**

**MR MUHAMMAD MOZAFAR KHAN  
(ANONYMITY NOT RETAINED)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr Ficklin of Counsel  
For the Respondent: Miss Johnstone

**DETERMINATION AND REASONS**

**Introduction**

1. The Appellant born on 15<sup>th</sup> March 1981 is a citizen of Pakistan. The Appellant who was present was represented by Mr Ficklin of Counsel. The Respondent was Represented by Miss Johnstone, a Presenting Officer.

### **Substantive Issues under Appeal**

2. The Appellant had originally entered the United Kingdom as a student in 2003 and on 15<sup>th</sup> October 2008 was granted leave to remain as a Tier 1 (Post Study) Worker valid until 15<sup>th</sup> October 2010. That leave was curtailed on 2<sup>nd</sup> June 2009 as he had submitted a false education certificate. However on 25<sup>th</sup> January 2011 he was granted a residence card under the EEA Regulations 2006 as a family member of an EEA national namely a Portuguese citizen exercising treaty rights in the UK. The Appellant and his spouse Miss Arruda married on 18<sup>th</sup> July 2010.
3. On 25<sup>th</sup> February 2014 the Appellant was refused leave to re-enter the United Kingdom as the Respondent took the view that the marriage between the Appellant and Miss Arruda was a marriage of convenience. The Appellant's residence card was therefore revoked. The Appellant lodged an appeal against that decision on 12<sup>th</sup> March 2014 and his appeal was heard by First-tier Tribunal Judge Edwards sitting at Manchester on 30<sup>th</sup> June 2014. He dismissed the Appellant's appeal on all matters. Application for permission to appeal was made and granted on 5<sup>th</sup> September 2014 and matter came before me sitting at Manchester on 24<sup>th</sup> November 2014 firstly to decide whether or not an error of law had been made by the First-tier Tribunal Judge. Following the hearing I found a material error of law had been made for the reasons provided in the decision contained within the papers. Directions were issued for the decision to be made afresh by myself sitting in the Upper Tribunal and the matter therefore came back before me in accordance with those directions.

### **The Proceedings - Introduction**

4. Mr Ficklin made preliminary submissions which I deal within the body of the decision below.
5. I next identified the documents available to me in this case.
6. The Respondent's documents consists of:
  - Immigration history.
  - Those documents listed within the bundle of documentation.
  - Previous determination and appeal related documents.
7. The Appellant's documents consists of:
  - Skeleton argument.
  - Those documents listed at pages 1 to 285 on the index sheet to the bundle.
  - Chapter 8 IDIs.

- **Miah [2014] UKUT 00515.**

### **Evidence**

8. The Appellant was called to give evidence. He identified his full name and address. He further identified his written witness statement at pages 3 to 9 of the Appellant's bundle as being true and correct.
9. In cross-examination he confirmed that he had submitted his first wife's death certificate her date of death being 16<sup>th</sup> October 2009. He was referred to page 74 of the Appellant's bundle when he said his wife had died in August or September 2009. He was also referred to two letters within the Respondent's bundle from Pakistan which referred to his wife having died some three years back. The Appellant confirmed there was no death certificate rather a death summary which he had obtained from his family after her death. He said his children were living in Pakistan. He was referred to page 45 of the Appellant's bundle his statement in reference to a certificate of approval where he said that he had met his current wife in July 2009 although in his interview record he had said it was September 2009. His wife did not know when he met her about his first wife and children and the fact they were still living with him when she came to his house. He was then referred to various extracts of the witness statements of himself, his wife and witness concerning the circumstances surrounding the marriage on 17<sup>th</sup> July 2010. It was also pointed out to the Appellant that his wife had only flown into London on 17<sup>th</sup> July 2010.
10. He was referred to his wife's interview where she said that she had returned to Portugal for one year although he claimed that she had only returned for a three to four week period. There were questions with reference to his wife's employment and bank accounts and the payment of rent to the landlord who was also the employer of both the Appellant and his current wife.
11. In answer to questions I raised for clarification he confirmed that he had six children with his first wife and that he had come to the UK in 2003 as a student and his then wife had come to the UK in 2005 as a dependent bringing their three youngest children with her. He said that he had been granted leave as a Tier 1 worker in October 2008 and was working in a cash and carry outlet and living in Liverpool. He confirmed that his leave was curtailed in June 2009 and that his wife had left the UK with the three dependent children on 18<sup>th</sup> September 2009. He had not returned with her.
12. I next heard from Miss Arruda who also confirmed that her witness statement at pages 10 to 18 of the Appellant's bundle was true and correct.
13. In cross-examination she said that when she had met the Appellant she had been in the UK for a few weeks since June 2009 and after they met he had told her that his immigration status had ended. She had never met the Appellant's first wife or spoken to her. She had gone to the Appellant's house after meeting him believing that his wife was in Pakistan and that she was not aware that the wife and children

were in fact still living in the home when she went there. Initially she said she was not even aware that he was married. When she had come to the UK it was her intention to visit Liverpool because of The Beatles and then things happened by chance in terms of their meeting. She said that the Appellant had told her that he had children at the point where his wife had died. She did not know why the Appellant had never gone to Pakistan after the death of his first wife. She said that she had travelled to London on 17<sup>th</sup> July 2010 with the Appellant and Mr Jaji and was referred to that fact within paragraph 12 of her witness statement. She had then returned to Portugal after marriage having travelled to Portugal in December 2010 and said that she had gone back for a few weeks and had not returned to Portugal since. She said that she had worked in the UK for three years receiving wages in the shop and had deposited money in her bank account. She said she was unable to go away for a long period of time as she was needed to work in the shop.

14. I finally heard from Mr Jaji who confirmed his full name and identified his witness statement at pages 19 to 24 of the Appellant's bundle as being true and correct. He said that he had employed the Appellant Mr Khan from about February or March 2011 on a full-time basis and he had not worked for anyone else. He had worked for him at the Best-one Express shop and was referred to P60s for the years 2013 and 2014. He said that he employed the wife full-time. He said that he leased the flat above the shop where they lived.
15. In answer to matters that I raised by way of clarification he confirmed that he had known the Appellant since 2006 when he was a student living in Liverpool and had met the Appellant's first wife and children and confirmed the Appellant and his wife got on well together. He did not recall the Appellant's leave being curtailed nor did he recall the Appellant's first wife leaving the UK nor did he know why she went back to Pakistan. He said he was still in contact with the Appellant and had started work with him in about 2011.
16. He said that Miss Arruda had started work for him in August 2010 and was referred to page 230 of the Appellant's bundle in terms of a letter written saying that she worked full-time some 35 hours. He could not recall if she had gone away for any lengthy period of time. He was also referred to page 242 of the Appellant's bundle.
17. Finally I heard submissions on behalf of the Respondent who referred me to the various matters of credibility in respect of the totality of the account put forward by the Appellant and his witnesses.
18. I finally heard submissions on behalf of the Appellant who responded to the issues of credibility raised by Miss Johnstone and referred to weaknesses and difficulties in respect of reliance upon the interviews conducted with the Appellant and Miss Arruda.
19. At the conclusion of the hearing I reserved my decision to consider the documents and evidence submitted. I now provide that decision with my reasons.

## Decision and Reasons

20. Mr Ficklin made preliminary submissions concerning the admissibility and reliability of the interview records of the Appellant and Miss Arruda contained at pages 69 to 130 of the Appellant's bundle.
21. It was submitted that the case of Miah indicated at headnote (iv) that the interviewer's summary or commentary to the decision maker must as a matter of fairness be disclosed. It was noted in this case that had not occurred and accordingly the interview should be ruled inadmissible.
22. I found against that submission. The principle referred to in Miah seems clear and is the promotion of fairness by proper disclosure. If the interviewing officer at the conclusion of the interview forms an opinion upon the genuineness or otherwise of the marriage he may enshrine those views in a summary or document which is passed to the decision maker. Clearly the views of the interviewing officer may affect the judgment and outcome of the decision maker and the disclosure of the summary is therefore important in terms of the fairness of proceedings. However in this case the interviewing officer and the decision maker (see refusal letter) was the same person and accordingly, nor surprisingly, no summary was ever made and even if one had been made it would have been no more than an aide-mémoire. In those circumstances the non-disclosure of a document never made where both the interviewer and decision maker were one and the same person does not breach the principles set out in Miah.
23. Secondly it was said that the interviews were not administered under caution, and that was against Chapter 8 IDI. Chapter 8 (3.5) of the IDIs does refer to interviews being normally conducted under caution where a person is arrested on suspicion of an immigration related offence. Presumably that is because such an offence may be a criminal offence and any prosecution that followed could not rely upon a an interview not under caution and not in accordance with the Police and Criminal Evidence Act 1984. However non-caution interviews can take place (3.7). Where there is evidence of a relationship (in this case the marriage certificate and previous granting of leave). The Appellant was not arrested. The fact that the interview was not under caution does not mean the evidence cannot be used for the purposes of the EEA Regulations 2006. It does mean that interview is unlikely to have evidential weight if theoretically any criminal proceedings were contemplated.
24. In respect of both submissions therefore I found no basis for exclusion of the interviews. Indeed the interviews formed the best evidence available of the parties' relationship and in circumstances where the Respondent conceded they had answered many questions consistently and accordingly exclusion could be construed as being unfair to the Appellant.
25. This is not an easy case and has required a careful examination of all the documentary evidence together with the oral evidence provided and the helpful submissions from both representatives. It is a case where the initial burden of proof at the proposition that this is a "sham" marriage is upon the Respondent to produce

reasons and evidence in support of such proposition and if met, the burden then passes to the Appellant to prove such genuineness on the balance of probabilities.

26. The starting point is an examination of the fate of the Appellant's first wife. That is significant firstly in terms of the validity of the marriage under examination, the credibility of the Appellant generally and potentially some importance on the issue of genuineness of this marriage. The Respondent questioned the alleged death of the first wife and in the refusal letter of 14<sup>th</sup> June 2014 provided proper and adequate reasons why that aspect of the case was called into question. The documentary evidence available discloses a proper basis for the Respondent's concern such that any initial burden upon the Respondent has been discharged. I have now examined the totality of the evidence on this aspect of the case. Equally the Respondent discharged the burden of proof in that there were in respect of other aspects of the case reasonable suspicions that were referred to by the Respondent.
27. The Appellant and his first wife had been married for some time. They had six children. The Appellant had come to the UK in 2003 as a student. The Appellant's wife and three of their children had joined them in 2005. Accordingly that two year period of separation had not precipitated an end to the marriage. They had lived together in the UK since 2005 without any obvious marital problems. Mr Jaji who knew them very well accepted in oral evidence that they got on well together. The Appellant's last application to remain in the UK as a Tier 1 (Post-Study Work) resident (October 2008) included his wife as a dependent. When his leave was curtailed she and the children eventually left the UK in September 2009. In summary there is no evidence to suggest this marriage had any difficulties or they intended to live apart at any stage.
28. The Appellant's first wife was allegedly killed in a bomb blast in Sade on 15<sup>th</sup> October 2009. That is a matter of less than one month after she arrived back in Pakistan. The Appellant has never produced a death certificate. He has produced a death summary document. He has never produced or provided evidence concerning the circumstances surrounding the alleged death of his wife. He did not attend her funeral. He did not make or produce any evidence to show he made enquiries concerning the welfare of his children and in particular whether any of them had been injured as a result of such incident. He had not travelled to Pakistan to see his family, make enquiries and pay respects to his wife despite what on the face of it was a sudden and unexpected death of an individual to whom he was happily married for many years. Whilst individual attitudes may vary I do not find that to be a probable set of circumstances or behaviour.
29. Additional to those factors when interviewed the Appellant at questions 52 and 53 had been a little uncertain of the date of his wife's death stating it was either August or September; both wrong months and months when she still resided with him in the UK. Further he described her death as being caused by a stray bullet. He also opined at question 55 that he may have a death certificate at his house but he was unsure. I find the vagueness of his knowledge of when his wife was killed and

whether or not he had a death certificate to be improbable. Equally I find it entirely improbable that he would provide clearly conflicting accounts of how she died.

30. Further there are two letters dated 20<sup>th</sup> March 2014 and 2<sup>nd</sup> April 2014 from the Office of the Political Agent in Qurrán following a request concerning the alleged death of the Appellant's wife. It is not easy to know how reliable those letters are. However both letters state that the Appellant's wife died three years back from the date of the letter i.e. in about 2011. That is a not insignificant period later than the Appellant's claim. It is certainly not consistent with her death in October 2009 nor her being deceased at the date of his marriage to Miss Arruda. There is further the total absence of any death certificate. Given the Appellant has substantial family in Pakistan and given the presence of an alleged death summary it may be expected that a death certificate could be produced with relative ease.
31. All of the above factors point to the conclusion that on balance the account given by the Appellant of his wife being killed in October 2009 is not true.
32. The consequence of that finding is that I conclude the Appellant has not been credible upon this aspect of his case. I also conclude that his marriage to Miss Arruda was in all likelihood an invalid marriage under both English and Portuguese law as he was already married at the time and had not been divorced.
33. The circumstances of the meeting of the Appellant and Miss Arruda are also highly questionable. The Appellant in oral evidence claimed to have met Miss Arruda in July 2009. In interview at question 27 he had said September 2009. In his witness statement in June 2014 he had stated he had met her in mid-2009. Given the passage of time, in ordinary circumstances, a difference of a few months may amount to little, but it was significant in this case. In July 2009 the Appellant's first wife and three children were living with him in what was described by Mr Jaji as a happy marriage. It is questionable therefore why the Appellant was embarking on an affair with Miss Arruda. Even September/October 2009 would place the matter either whilst his wife was still with him in the UK or shortly after her return to Pakistan.
34. Even more strangely, according to the Appellant in his witness statement (and Miss Arruda in hers) they instantly clicked, and started a conversation leading to an exchange of telephone numbers and an agreement to contact each other. Such instant chemistry does of course occur. However I note from the refusal letter that a Section 24 report was produced by the registrar at the date of their marriage in July 2010 that stated:

"Parties are unable to converse in the same language. Bride needed several attempts to correctly state groom's full name. The interpreter went out of the room twice to liaise with the groom."

Given the marriage was a year after this alleged meeting I find it entirely lacking in credibility that July or September 2009 the Appellant and Miss Arruda were able to hold any form of conversation or had any common language, culture or background

such that it is easy to say what chemistry might have flowed between them in the circumstances described.

35. It is further claimed by the Appellant that very shortly after their meeting in July 2009 she came to his home. That is echoed in his witness statement. I find that most unlikely given that until 18<sup>th</sup> September 2009 the Appellant's first wife and three children were still living with him. Equally I find it not credible that she was unaware that he was married if she had visited his home.
36. I have also noted the letter dated 25<sup>th</sup> November 2009 from Ali Sinclair Solicitors (page 31 Appellant's bundle). This is the covering letter written on behalf of the Appellant for approval of marriage. It refers to the parties as being engaged and the Appellant and Miss Arruda also refer to themselves as cohabiting. Indeed at page 152 of the Appellant's bundle is a joint tenancy agreement of [ - ] Street, Liverpool and dated 1<sup>st</sup> November 2009. I find this aspect of the evidence of real concern. Firstly, even if the parties had met as early as July 2009, it is still a rapid movement to be signing a joint tenancy agreement and living together on 1<sup>st</sup> November 2009. If the first meeting was as late as September 2009 as suggested by Miss Arruda then it is even swifter. Further, if the Appellant was still happily married to his first wife until her alleged sudden death on 18<sup>th</sup> October 2009 it is not in my view credible that two weeks later he would be signing a tenancy agreement to live with another woman from an entirely different culture and background with whom he could barely converse due to a lack of a common language.
37. I have next looked at the circumstances surrounding the marriage in July 2010 and have carefully considered the evidence of all three witnesses. The witnesses deal with this aspect of the case as follows (Appellant paragraphs 14 to 16 witness statement, Miss Arruda paragraphs 12 to 13 witness statement, Mr Jaji paragraph 5 witness statement). Their separate evidence is entirely clear and consistent. They claim that all three travelled from Liverpool to London on 17<sup>th</sup> July 2010 and stayed overnight in a Travel Inn Hotel in Newham which had been previously booked prior to the wedding taking place on 18<sup>th</sup> July 2010 in London. Unknown and unavailable at the date of making their witness statements (and the earlier interviews of the Appellant and Miss Arruda), was information now available concerning the flights relating to Miss Arruda. Passenger search results have been provided by the Respondent concerning her flights. I acknowledge that there appears a typographical error relating to the year of her birth on one such flight but I am satisfied that these results relate to her providing as they do her full and correct name, passport or identity document number as verified in independent documents within the bundle.
38. One of those documents shows that she flew from Lisbon to Heathrow on 17<sup>th</sup> July 2010 only arriving at Heathrow at 19:55. It is unlikely therefore she would have cleared the airport before 20:30. That document therefore demonstrates the evidence presented by the Appellant, Miss Arruda and Mr Jaji that all three travelled from Liverpool where they had been living to London on 17<sup>th</sup> July 2010 is simply not true. It demonstrates a lack of credibility in the account and also demonstrates a



collaboration to tell a lie between all three. Finally it demonstrates that Miss Arruda was not in Liverpool immediately prior to the wedding and living with the Appellant. Further flight information shows that she must have left the UK shortly after the wedding as she was flying back to the UK from Lisbon on 3<sup>rd</sup> August 2010. She then stayed in the UK for only four days before leaving for Lisbon on 6<sup>th</sup> August 2010. There is further a flight record showing her leaving Liverpool on 8<sup>th</sup> November for the Algarve Airport of Faro.

39. In summary I find the evidence presented by all three witnesses concerning the circumstances leading up to the wedding to be false and that there has been collusion between these three witnesses prior to the production of their witness statements. I do not find the inferential or clear evidence they sought to portray of the Appellant and Miss Arruda cohabiting in Liverpool prior to the wedding and travelling together down to London on the eve of that wedding to be true. Further the flight records disclose that not only did she fly in the evening before the wedding but very shortly after the wedding she was flying back and forth on her own to Portugal.
40. A further significant area I have examined in this case is the very clear inconsistency in a period away from the UK spent by Miss Arruda. She in interview had said she started work for Mr Jaji in October/November 2010, worked for three months and then returned to Portugal for one year (questions 54 to 60). She confirmed she referred to a year's absence at question 65 when she stated that she had only returned to the UK in November 2011 and had gone to Portugal to look after her elderly mother. In contrast the Appellant said Miss Arruda since marriage had only been to Portugal once for a three to four week period (question 164). In oral evidence Miss Arruda claimed she had gone to Portugal in December 2010 but only for a few weeks. Curiously in her witness statement made in June 2014 she could not recollect how long she had spent in Portugal. Mr Jaji has provided letters concerning her employment. At page 233 he states that she started work for him on 9<sup>th</sup> August 2010 the letter being dated 9<sup>th</sup> September 2010. A second letter dated 13<sup>th</sup> September 2010 was issued (page 234). A number of P60s for her have been supplied (pages 239 to 241). They do not include P60s for the tax years April 2011 to April 2012. That substantially covers the period Miss Arruda claims to have been in Portugal for twelve months in her interview. Finally Mr Jaji wrote a letter in his capacity as her employer at W & Z UK Limited (page 242) confirming that she began work with him on 6<sup>th</sup> April 2012.
41. I am satisfied therefore that Miss Arruda left the UK in about November 2010 and was absent from the UK for at least twelve months and did not work in the UK until April 2012 on her return. Again therefore I find the evidence of the Appellant that his wife only stayed in Portugal for three to four weeks on one occasion to be entirely false. I also find that Miss Arruda's oral evidence inconsistent with her interview record is a dishonest attempt to now provide consistency with the Appellant. The best that can be said for Mr Jaji's evidence on the matter (paragraphs 8 to 9 witness statement) is that at best he has been disingenuous.

42. There are other aspects of this case when examined in detail that disclose inconsistencies and flaws in the account provided. For the sake of time I do not propose to deal with each and every single point but have dealt above with the major factors.
43. This is not necessarily a classic case of a “sham” marriage or at least not at the point when the Home Office very belatedly became involved. As I noted at the error of law hearing, it is clear that the Appellant and Miss Arruda certainly by 2014 had knowledge of each other and could consistently answer questions. In one sense that is hardly surprising given that they had four years to consider the matter and also I am satisfied that they do reside at least some of the time within the same flat above the shop owned by Mr Jaji who is their employer. I have also carefully considered his evidence because he plays a reasonably prominent role in this case, again as I anticipated at the error of law hearing. I have concluded as follows. The Appellant when he first came to the UK in 2003 had no intention of returning to Pakistan and was determined by any means to remain in the UK, including the production of a bogus education certificate at one stage. I am satisfied that when his leave was curtailed in July 2009 his wife and children returned to Pakistan in September 2009. He decided to remain, placing his selfish interests above that of being with his wife and family. I do not accept that his wife was killed in October 2009 as claimed. Whether she died in about 2011 or is still alive is not known and perhaps not now relevant for these purposes. I am however satisfied that in July 2010 when the Appellant married Miss Arruda he was still married to his first wife and she was still alive. There I find his marriage to a Portuguese national void under both English and Portuguese law. Further I am entirely satisfied that the marriage was a sham brought about simply to ensure the Appellant found another mechanism for remaining in the UK. For her part Miss Arruda, was single with adult children and little or no obvious dependency or ties in Portugal. Her prospects and finances there, are not known, but I suspect were not particularly good. She I find has had a financial benefit in this sham marriage in that at the very least she has been able to work in the UK at Mr Jaji’s shop and been accommodated by him above that shop. She may also therefore have availed herself of UK tax credits and other such benefits. Mr Jaji for his part is a long-time friend of the Appellant and I find that he has been a facilitator in that which has occurred.
44. In short this has been a sham marriage from inception that has involved a not insignificant degree of deceit and deception on the part of the Appellant but also Miss Arruda and to some extent Mr Jaji. This is not a genuine marriage nor is this in the alternative a durable relationship. There is no basis for the Appellant remaining in the UK under the 2006 EEA Regulations. I find no basis for him remaining under Article 8 of the ECHR. He has no family life in the UK but a substantial family life in Pakistan. His private life has been built from start to finish on deception and the most favourable outcome from his point of view is leaving the UK without prosecution.

**Notice of Decision**

I dismiss this appeal under the EEA Regulations and under Article 8 of the ECHR.

Anonymity not retained.

Signed  
Deputy Upper Tribunal Judge Lever

Date **10<sup>th</sup> March 2015**