



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

Appeal Number: IA/44125/2014

THE IMMIGRATION ACTS

**Heard at Taylor House
On 8 October 2015**

**Decision & Reasons Promulgated
On 9 October 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE SAFFER

Between

**RAJA NASEER AHMED
(NO ANONYMITY ORDER MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Rashid of Counsel

For the Respondent: Mr Nath a Senior Home Office Presenting Officer

DECISION AND REASONS

Background

1. The respondent notified the appellant of her decision to refuse to issue an EEA residence card as confirmation of a right of residence under European Community law as the spouse of Maria Amalia Fernandes Roque, a Portuguese national exercising treaty rights in the United Kingdom, on 23 October 2014. His appeal against that decision was dismissed by First-tier Tribunal Judge Swinnerton ("the Judge")

following a hearing on 22 May 2015. This is an appeal against that decision.

2. First-tier Tribunal Judge Kelly granted permission to appeal (27 August 2015) only on the grounds that;

“... it is arguable, as the applicant contends, that the Tribunal has not demonstrated that it applied the burden and standard of proof relevant to “sham” marriage cases (an initial evidential burden being upon the respondent) and/or that it failed to make a clear finding that the marriage was one of convenience which had been entered into for the sole purpose of facilitating the appellant’s residence in the UK.”

Respondent’s reply

3. The respondent contends (3 September 2015) that there were reasonable grounds for suspecting that the marriage was one of convenience and that there were clear findings made.

Discussion

Ground 1 - applied the wrong burden and standard of proof

4. The Judge stated [27];

“The burden is on the respondent to adduce evidence which supports the belief that the marriage is one of convenience on a balance of probabilities.”

5. Mr Rashid conceded that the Judge had identified the correct burden and standard of proof and nothing in the decision indicates that it was not applied correctly.

6. In my judgement there was therefore no material error of law in the decision in the application of the burden and standard of proof.

Ground 2 - failed to make clear findings

7. The Judge recorded that;

[5] “... the appellant attended a marriage interview...without his wife whose whereabouts he did not know.”

[7] “...the appellant was not able to spell his wife’s name, did not where his wife had worked and could not provide evidence that he had lived with his wife.”

[8] “...a certificate of approval to marry Miss Maria Amalia Fernandes Roque...was issued on 18 May 2009. On 27 May 2009, nine days later, the appellant’s EEA national sponsor applied for a certificate of approval to marry another Pakistani national.”

8. The Judge found the following;

[29] “The appellant ...married his wife...on 27 May 2009 having known her for about 5 months...His wife left in July 2012 and divorce proceedings were commenced on 14 August 2014.”

[30] "...The appellant's wife did not appear as a named tenant in any of the tenancy agreements, including the period from 2009 to 2012 when the appellant was stated to be living with his wife at that address."

[32] "The evidence...as to the nature of his relationship with" his wife "was not credible. The Tribunal did not find credible that having known his wife for more than three and a half years prior to her leaving, he would not have been aware of where she worked or ever have visited her family."

[33] "The appellant speaks little English and he would have had significant difficulties communicating with his wife given that English was the stated language of communication between them."

[34] "The Tribunal noted that the appellant did not finish his schooling but did not find credible that he would be unable to spell his wife's name or remember her date of birth."

9. It was submitted by Mr Rashid that there was evidence before the Tribunal that the interview was not complete and that there were issues with the interpreter. There was no presenting officer at the hearing and therefore no cross examination. He mentioned the interpreting problems at the interview. He said in his interview that he did not know the name of the shoe shop.

10. I pointed out to Mr Rashid that in his interview it is recorded (q15) that the appellant was asked;

"where was your wife working when you last saw her".

He is recorded as having said "In a (sic) shopping in Ilford. I don't know the shop. It was a shoe shop. I don't remember its name."

He continued (q20) "I never said she worked in a shoe shop. I said I saw her in there. I didn't know she worked there or lived there", and

(q21) "I told you 3 times she never worked at a shoe shop. I don't know where she worked. She said it's not my problem."

In response to the question (q22) "So for 3 years of marriage you never knew where your wife worked or what she did?" he said "yes, she never told me".

11. I pointed out the appellant's solicitor letter (26 August 2014) in support of the application that was contained within the respondent's bundle;

"The Applicant tried to find her and reached the place where she was working but the employer informed him that she did not come to work."

12. Mr Rashid repeated that there were issues with the interpreter. He questioned the accuracy of the interview record. The appellant correctly identified the month and year of his wife's birth. There is a lack of a finding as whether it was a marriage of convenience as

opposed to whether the relationship was genuine. There were inadequate reasons.

13. Mr Nath submitted that if there was never a genuine relationship it was a marriage of convenience. The findings had to be read together. The lack of a presenting officer at the hearing was not relevant as the Judge had to assess the evidence and make findings which he did. The interview record discloses the confusing answers from the appellant as to where his wife worked.
14. I agree with Mr Nath's submissions. The absence of the presenting officer does not diminish the Judges responsibility to make findings on the evidence and apply the law correctly.
15. The whole thrust of Mr Rashid's submission rests on the accuracy and completeness of the interview. The submission is misconceived. The appellant's solicitor had written, presumably on his instructions, that "The Applicant tried to find her and reached the place where she was working but the employer informed him that she did not come to work". That contradicts the appellant's evidence at the hearing that he did not know exactly where she worked, and the answers recorded in his interview (q21/22).
16. However the Judge has not found against the appellant on the basis of these discrepancies. He based his findings on the appellant's oral evidence and q21/22 of the interview. In those circumstances the Judges finding [32] that it was not credible that "having known his wife for more than three and a half years prior to her leaving, he would not have been aware of where she worked" was open to the Judge. That being the case, it was open to the Judge to find that the assertion he makes in his oral evidence and interview (q21-22) that he did not know where she worked, when added to those recorded at [30, 33, and 34], can only mean that the reason for him not knowing where she worked was that [35] they "did not have a genuine relationship" and, as submitted by Mr Nath, that consequently it was a marriage of convenience.
17. In my judgement there was therefore no material error of law in the decision.

Decision:

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

I do not set aside the decision.

Deputy Upper Tribunal Judge Saffer
9 October 2015