



IAC-AH-CO-V1

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

Appeal Number: IA/13341/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 14 December 2015**

**Decision & Reasons Promulgated
On 6 January 2016**

Before

UPPER TRIBUNAL JUDGE MCGEACHY

Between

AZAT ANANOV

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms E Harris Counsel, Farani Javid Taylor Solicitors LLP

For the Respondent: Mr K Norton, Home Office Presenting Officer

DECISION AND DIRECTIONS

1. The appellant, a citizen of Turkey born on 13 September 1987 appeals, with permission against a decision of Judge of the First-tier Tribunal Anstis promulgated on 24 April 2015 in which he dismissed the appellant's application against a decision of the Secretary of State to refuse to issue a residence card on the basis of his marriage to a Lithuanian citizen.
2. The basis of the refusal was that the sponsor was not exercising Treaty rights. The appeal had previously come before Judge of the First-tier Tribunal James at a hearing at Hatton Cross on 31 October 2014. It appears that of her own motion the judge was concerned about the

genuineness of the marriage. After that hearing the judge adjourned the appeal having noted that the respondent had confirmed that she wished to interview the parties to the marriage and verify the documents regarding employment and self-employment.

3. Judge James gave directions which included that the respondent was to file and serve the notes of interviews of the appellant and the sponsor together with any verification report on the employment issues by 16 January 2015 and that:-

“The respondent is to also file and serve any amended or additional reasons for refusal by Friday 16 January 2015.”

4. No amended or additional reasons for refusal were served. What was served was the notes of interview: these comprised over 1,000 questions.
5. At the resumed hearing Judge Anstis considered the evidence relating to the sponsor’s self-employment and accepted that she was self-employed and was exercising Treaty rights. The judge however went on to consider whether or not this was a genuine marriage and despite having heard evidence from both the appellant and the sponsor concluded that the marriage was not genuine. She went on to say in paragraph 51:-

“I consider that in providing the marriage interview transcripts, the respondent has shown that there are ‘factors which support suspicions for believing the marriage is one of convenience’, so that it is then for the appellant to show the marriage is not one of convenience.”

6. It was on that basis that the judge found the marriage was one of convenience.
7. The grounds of appeal asserted that the respondent has not discharged the burden of proof upon her to show that this was a marriage of convenience and in any event had not submitted the interviewer’s comments on the marriage – the decision in **Miah (interviewer’s comments: disclosure: fairness) [2014] UKUT 515** was relied on.
8. It was also asserted that:-

“The appellant further raises the point raised before that it was not open to the IJ who adjourned the case to raise the issue of genuineness, when the respondent did not raise it and there was no evidence to suggest at that point that genuineness was an issue.”

9. Permission to appeal was granted by Judge of the Upper Tribunal Perkins who first stated that he considered that the judge was entitled to consider every aspect of the application – he referred to the determination in **RM (Kwok On Tong: HC 395 paragraph 320) India [2006] UKAIT 00039** which stated that it was usually necessary for a judge who wanted to take points not raised by the respondent to give the appellant notice that that point could be addressed. He stated, however, that it appeared that the judge had thought the appellant was on notice as to the nature of his marriage. However Judge Perkins referred to the determination in **Miah**

and stated that there was no “form ICV.4605” which had been disclosed and that it should have been or at least an explanation tendered for it not being disclosed.

10. He gave a direction that it was for the respondent to serve any further evidence that might be necessary.
11. I have considered the determination of the judge and in particular the fairness of the judge raising a matter – as it is alleged in the grounds of appeal – which had been raised only in submissions and therefore one on which the appellant had not been put on notice. I accept that it is, of course, the case that a judge can raise any material point but it is important that the appellant is given notice of that point and given the opportunity to respond thereto. It appears that that had not happened. More importantly, however, I consider the fact that Judge James gave a direction that the respondent should file and serve any amended or additional reasons for refusal but that the respondent did not do so was a clear indication to the appellant that he would not have to deal with the issue of whether or not the marriage was genuine. I therefore consider that the judge was not entitled to raise the further matter without proper notice being given to the appellant and that on that basis the decision of the judge in the First-tier was unlawful and therefore it is appropriate that it be set aside.

Decision

The decision of the Judge of the First-tier Tribunal is set aside.

Directions

The direction given by Judge James on 31 October 2014 that the respondent should file and serve any amended or additional reasons for refusal is repeated: these further reasons should be served by 25 January 2016.

The appeal is remitted to Hatton Cross. Time estimate two hours. No interpreter.

No anonymity direction is made.

Signed

Date

Upper Tribunal Judge McGeachy