



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

Appeal Number: EA/00052/2016

THE IMMIGRATION ACTS

Heard at: Manchester

**Decision and Reasons
Promulgated**

On: 27th September 2017

On: 28th September 2017

Before

UPPER TRIBUNAL JUDGE BRUCE

Between

**A U
(Anonymity direction made)**

Appellant

And

The Secretary of State for the Home Department

Respondent

**For the Appellant: Mr Ahmad, Counsel instructed by United
Solicitors**

For the Respondent: Mr Mills, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a national of Pakistan born in 1988. He appeals with permission the decision of the First-tier Tribunal (Judge JWH Law) to dismiss his appeal against the Respondent's decision to refuse to grant him with a residence permit under the Immigration (European

Economic Area) Regulations 2006 ('the Regs').

2. The reason that the Respondent gave for refusing to issue a residence permit is set out in her letter dated the 10th December 2015 ('the refusal letter'). The Respondent noted that the Appellant is married to an EEA (Latvian) national [AZ]. She noted that he had previously made an application for permission to reside as [AZ]'s spouse. The two had been interviewed in connection with that application but upon consideration of the answers provided at interview the Secretary of State was satisfied that this was a marriage of convenience and the application was accordingly refused, by way of letter served on the 3rd December 2014. Although there was a right of appeal against that decision the Appellant did not avail himself of that opportunity. He instead made a new application. A further interview took place. The Secretary of State maintained her position that this was a marriage of convenience and refused a permit. Again, no appeal was lodged. The Appellant instead made a third application, on the 22nd June 2015. The Secretary of State considered that the Appellant had submitted the same material that he had previously relied upon, and that this was not sufficient to demonstrate that this was in fact a genuine marriage. The interviews had resulted in numerous conflicting responses and demonstrated that the two had a lack of basic knowledge about each other.
3. When the matter came before the First-tier Tribunal in May 2017 the Appellant and his wife both gave oral evidence. Having heard that evidence the Tribunal accepted that they lived together, and were in a sexual relationship. It accepted that they had been able to give consistent answers to some of the questions that had been asked at interview, and that the odd inconsistent answer is not necessarily an indicator of a sham. It accepted that [AZ] had been pregnant in the preceding year but had unfortunately lost the baby. However, looking back at the answers that were given at the interviews the Tribunal was driven to the conclusion that this was a marriage entered into for the purpose of obtaining the Appellant permission to reside in the UK: it was, at its inception, a marriage of convenience. The fact that it had later evolved into an actual relationship could not change that. The Tribunal relied on the dicta to that effect in Rosa v Secretary of State for the Home Department [2016] EWCA Civ 14.
4. The grounds of appeal are that the First-tier Tribunal erred in:
 - a) Failed to give sufficient reasons for finding this to be a marriage of convenience;
 - b) Failing to take into account the "voluminous" evidence produced on appeal of a close relationship;

- c) Unreasonably concluding that this was a marriage of convenience;
- d) Making errors of fact such that the reasoning was impaired.

Discussion and Findings

5. Under Regulation 7(1)(a) of the Regs a spouse of a qualified EEA national is defined as a 'family member'. Although neither Directive nor Regulations specifically exclude a marriage of convenience from that definition Article 35 of the Directive reads as follows:

"Abuse of rights

Member States may adopt the necessary measures to refuse, terminate or withdraw any right conferred by this Directive in the case of abuse of rights or fraud, such as marriages of convenience. Any such measure shall be proportionate and subject to the procedural safeguards provided for in Articles 30 and 31."

Preamble 28 is as follows:

"To guard against abuse of rights or fraud, notably marriages of convenience or any other form of relationships contracted for the sole purpose of enjoying the right of free movement and residence, Member States should have the possibility to adopt the necessary measures."

6. It is clear from this that the Secretary of State would be entitled to refuse to grant a residence permit to a 'spouse' whose marriage had been contracted with the purpose of abusing the rights granted by the Directive.
7. The question raised in this appeal is whether the findings of the Tribunal about the *current* state of [AU]'s relationship should have led the Tribunal to inevitably, or at least on balance, conclude that this was a marriage contracted for genuine purposes.
8. There was no dispute as to the approach to be taken. The Respondent had produced interview records from 2014 and 2015 which demonstrated that [AU] and [AZ] had given markedly inconsistent answers when asked questions about their lives and their personal history. The marriage itself had taken place in June 2014 and the first interviews in November of that year. Apart from documentary evidence that they lived at the same address during that period, the interviews were the evidence closest in time to the date of marriage. The First-tier Tribunal found, and this decision cannot sensibly be challenged, that the interview records were sufficient to discharge the evidential burden upon the Secretary of State for the Home

Department.

9. The Tribunal went on to properly direct itself that suspicion having been aroused, the burden lay on the Appellant to establish that he was entitled to benefit from the free movement rights that he asserted. The Tribunal carefully considered that evidence and made positive findings of fact that a) this is currently a genuine and subsisting relationship, and has been for at least the past year and b) that it was not a genuine relationship at the time of the marriage. I asked Mr Ahmad to take me to the “voluminous” evidence said to have been overlooked by the Tribunal. He acknowledged that this material was in the most part relatively recent. The only evidence dating from the time of the marriage was the interview records, and post establishing that the two lived at the same address. There were no statements from friends or family, nor even any statements from the two witnesses themselves. There was, in short, no evidence at all to weigh against the interview records.
10. In its final reckoning the Tribunal looked carefully at the discrepancies highlighted by the Secretary of State for the Home Department. It rejected the contention that they were all relevant, but found that some were so striking, and about matters so fundamental to the claimed relationship, that they could not be reconciled with a finding that these two people were in a genuine relationship at the time of the interviews.
11. The Judge was, I find, quite right to draw a distinction between the state of affairs at the date of the appeal before him, and the position at the date of marriage. He cites the judgement of Richards LJ in Rosa: “the focus in relation to a marriage of convenience should be on the intention of the parties at the time the marriage was entered into, whereas the question of whether a marriage is ‘subsisting’ looks to whether the marital relationship is a continuing one”. Although this authority is not cited in the determination, that is consistent with the position of the Upper Tribunal in IS (marriages of convenience) Serbia [2008] UKAIT 00031:
 26. Mr. O’Callaghan suggested to us that a marriage that was a marriage of convenience at his inception might become a marriage that was not one of convenience in due course. We do not think that that issue strictly arises on the facts of this appeal, because the Immigration Judge was not prepared to accept the evidence of the relationship at any stage. For the avoidance of doubt we should indicate that we reject Mr. O’Callaghan’s submission. The relationship which gives rise to any rights under EU law and the Regulations is the marriage, formerly valid, and entered into at a specific time and

place. It is the ceremony and the act which count for these purposes and it is the ceremony and the act which, in the circumstances that give rise to it, amount to or do not amount to a "marriage of convenience". If the question had arisen on the facts of this case we should have held that the development of a real relationship after the marriage would not have assisted the appellant in his claim based on the marriage itself.

27. I am satisfied that the Tribunal in this case gave consideration to whether present circumstances could shed light on those that existed at the time of the marriage. I am satisfied that the Tribunal properly directed itself to the correct approach to such allegations, in respect of the standard and burden of proof. There was in my view no irrationality in the Tribunal concluding that circumstances had changed. Indeed, looking at the discrepancies identified - going to matters such as when the couple met, when their relationship started, when they started living together, when he proposed, whether there was a wedding ring, what they knew about each other's backgrounds and whether she had adopted an Islamic name - were so fundamental that it would have been difficult for a properly directed Tribunal to have found otherwise.

Decisions

28. The determination of the First-tier Tribunal contains no material error of law and it is upheld.
29. There is an order for anonymity.



Upper Tribunal Judge Bruce
27th September 2017