



**Upper Tribunal
(Immigration and Asylum Chamber)
EA/06344/2017**

Appeal Number:

THE IMMIGRATION ACTS

Heard at Field House

On 8th June 2018

**Decision &
Promulgated
On 14th June 2018**

Reasons

Before

UPPER TRIBUNAL JUDGE MARTIN

Between

**GHEORGHE BOGDAN MIHALCIOIU
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Olufunwa (Immigration Law Practice)

For the Respondent: Ms S Vidyaharan (Senior Home Office Presenting Officer)

DECISION AND REASONS

1. This is an appeal to the Upper Tribunal with permission by the Appellant in this case. It is an appeal against the decision of Judge Powell of the First-tier Tribunal, promulgated on 16th March 2018 following a hearing at Newport on 7th March 2018. The Appellant is a citizen of Romania born in 1985 and the appeal was against a decision by the Secretary of State to remove the Appellant, justified on the grounds of a misuse of the right to reside in accordance with the EEA Regulations. That arose because the

Secretary of State asserted that he planned to enter into a sham marriage with a citizen of India.

2. The judge heard evidence from the Appellant at the hearing and also from his employer. He had a copy of the interview records of the Appellant and his purported partner and he had a number of documents submitted on the Appellant's behalf. He did not hear oral evidence from the Indian national partner because she had returned to India. There is some dispute about whether she was removed or whether she was persuaded or coerced by the Home Office to return voluntarily. However, she did return in July 2017.
3. The judge was unimpressed by the oral evidence of both the Appellant and his employer and in the Decision and Reasons points to various difficulties with that evidence. He found that his employer's evidence and that of the Appellant and his partner did not match in terms of how and where they met, whether the partner worked and at which of the Italian restaurants the employer owns she worked at. There was contradictory evidence about that. There was also a photograph suggesting that the partner worked in one of the restaurants. The judge was also unimpressed by the employer's claim that he would have to shut the restaurant in Windsor, where the Appellant was a chef, if the Appellant left. He did not accept that was at all likely and thought that the employer was, to put it colloquially, "over egging" the situation in an attempt to support the Appellant.
4. The judge also noted with regard to the address where the Appellant and his partner had purported to live for some months, that there was no evidence of the partner's residence there. There was not a single piece of correspondence, bill or anything else to indicate that she was there. He also noted a few, admittedly minor, discrepancies in the interviews between the two and noted that despite living in a property shared with others the partner was unable to name those that they shared with, apart from just one person.
5. The judge also noted the record of the interviews and in particular that the Appellant, when asked, offered his phone up to the interviewing officer and the interviewing officer looked at photographs on it. He found there were very few of the partner and none of the Appellant and partner together. There were however a number of photographs of another woman including one of the Appellant kissing her. In the partner's interview she was also asked if the interviewing officer could look at the photographs on her phone and she declined saying that it was private. The judge attached considerable weight to the photographs on the Appellant's phone and whilst not making an adverse inference in relation to the partner's refusal to pass her phone over, noted that it was a lost opportunity for her to provide evidence of their relationship.
6. Mr Olufunwa before me argued that it is significant that the partner was removed and that she was therefore unable to give oral evidence. That is not relevant to the issue of whether the First-tier Tribunal made an error of

law. He argued with regard to the lack of documentary evidence that there are documents now available. However he agreed that these were not available to the First-tier Tribunal. A judge does not make an error of law in not taking into account evidence that was not before him. I am told that there were some difficulties with the partner's luggage arriving in India and she was some seven months without it. However, I do not accept that the partner took with her to India each and every document relating to the address which she supposedly shared with the Appellant.

7. It is also significant that there was no application for an adjournment to obtain additional evidence.
8. I am told there are now more photographs. Again, that was not evidence in front of the judge and he cannot be criticised therefore in not taking it into account.

Notice of Decision

9. Mr Olufunwa was unable to point to any error of law in the Decision and Reasons and for that reason that judgment is untainted by error and the appeal to the Upper Tribunal is dismissed.
10. No anonymity direction is made.

Signed

Date 13th June 2018

Upper Tribunal Judge Martin