



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: EA/07365/2016

THE IMMIGRATION ACTS

Heard at Civil & Family Court, Liverpool
On 23rd March 2018

Decision & Reasons Promulgated
On 16th May 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

MR HATEM LANDOULSI
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: No appearance

For the Respondent: Mr C Bates (Senior HOPO)

DECISION AND REASONS

1. This is an appeal against the determination of First-tier Tribunal Judge N M K Lawrence, promulgated on 20th July 2017, following a hearing at Stoke-on-Trent on 6th July 2017. In the determination, the judge dismissed the appeal of the Appellant, whereupon the Appellant subsequently applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

The Appellant

2. The Appellant is a citizen of Tunisia, a male, and was born on 3rd June 1990. He appealed against the decision of the Respondent Secretary of State dated 10th November 2015, rejecting his application for a residence card as a confirmation of his right to residence in the UK as the spouse of an EEA national exercising treaty rights, namely, of one Pavlina Marvalova, who was a Czech national.

The Judge's Findings

3. The judge was not satisfied that the Appellant was in a genuine and subsisting marriage relationship with the EEA national. He observed that whereas "there is a large body of agreement on details of personal lives" which "are uncontroversial" (paragraph 9), nevertheless, "there are issues raised in the interview, which go to the core of the relationship" (paragraph 9). Predominant amongst these were the issue relating to children where, Ms Marvalova said that the couple were planning to have children, and she would like one child, there was "a divergence between the Appellant and Ms Marvalova" (paragraph 15). The judge held that this "fundamentally undermines the marriage" (paragraph 15). In the same way, in the marriage interview, the Appellant was asked if Ms Marvalova had consulted a doctor in the UK and he had said that she had not, but "she had seen a dentist for her teeth" (paragraph 11) but Ms Marvalova stated the contrary. In the same way, the Appellant was asked if Ms Marvalova had been to the Czech Republic since their marriage and the Appellant said she had not but she said that she had been back twice "and on both occasions the Appellant took her to the airport" (paragraph 17).
4. The appeal was dismissed.
5. On 24th January 2018 permission to appeal was granted on the basis that the issue in this appeal was whether the marriage was one of convenience, but there had been a "paucity of reasoning" in the decision of the judge. It was also said that "the judge appears to have been unreceptive to the Appellant's evidence so permission to appeal is granted".

Submissions

6. At the hearing before me on 23rd March 2018, however, the Appellant was not in attendance, and neither was there any other person representing him, in attendance. Nor, was there any explanation forthcoming as to the reason for non-attendance.
7. Mr Bates, appearing on behalf of the Secretary of State, submitted that there was no error of law. The burden of proof is always upon the Appellant to demonstrate that they meet the EEA Regulations. However, the evidential burden can vary, and this was noted by the judge (at paragraphs 6 to 7).
8. It was also noteworthy that the Appellant repeated each question that was put to him before answering, thereby suggesting that he made sure that he understood the question before he ventured to answer it, and yet there had been discrepant answers

given persistently on the issue of children, and whether this had been discussed (see paragraphs 10, 14, and witness statement at paragraph 11). The Appellant's evidence (at paragraphs 11 and 13) did not provide a credible explanation. The judge was careful enough to properly suggest that the Appellant and his sponsoring wife had the interview record to refer to prior to the hearing and that their representative would have gone through this record with them (see paragraph 16 of the determination).

9. Even if the issue in relation to whether the couple wanted children was open to different interpretations, it was remarkable that the parties to the marriage got the question of whether the sponsoring wife had been to the Czech Republic after the marriage entirely wrong, especially given that Ms Marvalova suggested that the Appellant had actually driven her to the airport (see paragraph 17). The judge was entitled to assess the documentary evidence in the round (paragraph 18), and at best the evidence only established that the parties were living in cohabitation, knew one another, but that was not to suggest that it was not a marriage of convenience.
10. In considering all these matters, it is plain that the judge did correctly apply the burden of proof (see paragraph 19) and this is the case both in relation to the legal burden and the evidential burden. Mr Bates submitted that there were additional issues also, arising from the witness statements, which the judge had not referred to. For example, it does appear that the Appellant's representatives may have prepared them as to the generic questions that may be asked (see witness statement at paragraph 7) which would have been unnecessary if the relationship was genuine. Remarkably, even though the suggestion was that they had visited their solicitors only a day before they were unable to recall the name (see questions 17 to 22 of the interview record).
11. The allegation in the skeleton argument (at paragraph 3) that the Sponsor was made to use a Slovak interpreter, as an explanation for the inconsistencies, was untenable because there is no mention of this in the witness statement and the interview was clearly recorded using a Czech interpreter (see question 6). In any event, both the Appellant and the Sponsor signed the transcripts (see question 9, 12, 524).

No Error of Law

12. I am satisfied that the making of the decision by the judge did not involve the making of an error on a point of law (see Section 12(1) of TCEA 2007) such that I should set aside the decision and re-make the decision.
13. First and foremost, in an appeal where there have been questions of credibility raised in relation to whether this was a genuine marriage or not, it is remarkable that the parties have chosen not to attend, and provided no explanation for doing so.
14. Second, the inconsistencies do not just end with whether the parties had discussed how many children they were going to have if any, and the manner in which they had done so. They extend to the sponsoring wife saying that she had twice after her marriage been back to her country, and that on each occasion the Appellant had driven her there, but the Appellant stated that she had not returned. The judge was entitled

in all the circumstances of the case, to conclude that the marriage was not a genuine one.

15. Had the Appellant attended, or someone attended on his behalf, representations could have been made in relation to these issues, but since there was no attendance, no explanation is forthcoming, such as to suggest that the judge may have erred in law.

Notice of Decision

16. There is no material error of law in the original judge's decision. The determination shall stand.
17. No anonymity direction is made.

Signed

Date

Deputy Upper Tribunal Judge Juss

14th May 2018