**Upper Tribunal**
**(Immigration and Asylum Chamber)** Appeal Number: EA/08230/2016

**THE IMMIGRATION ACTS**

**Heard at: Manchester**
**On: 14th March 2018**

**Decision & Reasons Promulgated**
**On: 23rd March 2018**

**Before**

**UPPER TRIBUNAL JUDGE BRUCE**

**Between**

**Syed Zaigham Arafat Bukhari**
**(no anonymity direction made)**

Appellant

**And**

**Secretary of State for the Home Department**

Respondent

**Representation:**
**For the Appellant: Ms G. Patel of Counsel instructed by Amjad Malik Solicitors**
**For the Respondent: Mrs Aboni, Senior Home Office Presenting Officer**

**DETERMINATION AND REASONS**

1. The Appellant is a national of Pakistan born on the 1st April 1972. He appeals with permission[1] the decision of the First-tier Tribunal (Judge Ennals), who on the 14th July 2017 dismissed his appeal against a decision to revoke his residence card, made with

[1] Permission granted on the 22nd December 2017 by First-tier Tribunal Judge Easterman

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reference to regulation 2 of the Immigration (European Economic Area) Regulations 2006.

**Background and Matters in Issue Before the First-tier Tribunal**

2. The relevant chronology in this case was not made altogether clear but in summary the facts are these. The Appellant came to the UK in 2004 with leave to enter as a student. On the 1st December 2008 he married a Portuguese national who was exercising treaty rights in the UK. Her name was Ms Mendes. The Appellant duly applied for, and on the 4th November 2009 was granted, confirmation of his right to reside in the UK as the spouse of Ms Mendes. On the 17th January 2014 he was granted a permanent residence card.

3. At some point thereafter the Appellant applied to naturalise as a British national. When the Respondent considered that application the following matters came to light. The Appellant and Ms Mendes were divorced on the 1st September 2014. On the 29th November 2014 he had married in the UK a Pakistani national, Ms Tabassum. Ms Tabassum and the Appellant had a child together, born in Pakistan in 2005. These assertions led the Respondent to interview the Appellant and Ms Tabassum and having done so she concluded that discrepancies in the accounts given "did not add up". The Respondent found that the Appellant had been married to Ms Tabassum prior to his marriage to Ms Mendes and that his marriage to Ms Mendes had in fact been a marriage of convenience conducted for the purposes of obtaining a residence card under the regulations. The Secretary of State revoked the Appellant's residence card on the 10th June 2016. I assume, although I am not told, that she also rejected his application for naturalisation as a British national.

4. The Appellant exercised his right of appeal before the First-tier Tribunal. The matter came before First-tier Tribunal Judge Ransley on the 13th June 2017. On that day the Respondent sought to introduce further evidence, and to supplement her grounds for revocation. She produced a copy of Ms Tabassum's passport, held on Home Office files, upon which the Appellant is named as her husband. That passport was issued on the 2nd November 2007. The Respondent submitted that this was further evidence that the marriage to Ms Mendes was a sham, and further that in the absence of any evidence of a divorce from Ms Tabassum, it also demonstrated that the marriage to Ms Mendes was invalid, since the Appellant had not been free to marry her. Judge Ransley very fairly adjourned the matter, to enable the Appellant to give instructions to his legal representatives on this new evidence.

5. On the 14th July 2017 the matter came before Judge Ennals. Having had regard to the documentary evidence before him, and the live evidence given by the Appellant, Judge Ennals determined that the Appellant had in fact been married to Ms Tabassum all along, and in particular at the point that he purported to marry Ms Mendes. The conclusion is simply stated:

> "The EEA residence card, issued on the basis of marriage to an EEA national, was issued on the basis of a false representation, and is validly revoked. On that basis I do not need to consider whether the marriage to Ms Mendes was for convenience, since it was not a valid marriage at all".

6. The appeal was accordingly dismissed and the Appellant now challenges that decision on several grounds.

**Discussion and Findings**

*Ground (i): Failure to Consider Material Evidence*

7. Ground (i) is concerned with Judge Ennal's finding that the Appellant and Ms Tabassum had been married prior to the marriage to Ms Mendes. Ms Patel submits that the Tribunal based that finding solely on the fact that he had been named as Ms Tabassum's husband in her 2007 passport, and that in taking that approach he erred in failing to weigh in the balance competing evidence to the effect that they not in fact been married. In particular Ms Patel relies on the record of interviews conducted by the Respondent on the 4th May 2016 when the Appellant and Ms Tabassum both denied having been married in Pakistan.

8. I am satisfied that Judge Ennals was entitled to place considerable weight on the fact that Ms Tabassum named the Appellant as her husband in her 2007 passport. The Appellant had denied knowing that she had done so but this is of little consequence, since it would appear likely that Ms Tabassum would necessarily have had to satisfy the Pakistani passport authority that he was in fact her husband. I am further satisfied that this was not the sole evidence upon which Judge Ennals based his decision. At paragraph 12 he finds that the Appellant is also named as Ms Tabassum's husband in a second passport issued to her, on the 18th October 2012, at a time when he was supposedly still living with Ms Mendes. At paragraphs 12-15 Judge Ennals highlights the fundamental discrepancy in the Appellant's evidence on the point. He and Ms Tabassum had denied at interview that they had ever been married in Pakistan, yet at hearing, having been confronted with the passports, the Appellant changed his evidence and agreed that they had in fact undergone an Islamic marriage sometime in 2004 or 2005. There were therefore several reasons why Judge Ennals reached the conclusions that

he did, and it is in my view unarguable that he omitted to weigh in the balance the Appellant's interview record: he expressly refers to that evidence at paragraph 14 of his reasoning. He rejects that evidence on the grounds that it is inconsistent with the Appellant's testimony before him.

*Ground (ii): Validity of the 'Islamic' Marriage*

9. The second ground advanced before me was that Judge Ennals had erred in his conclusion that the Islamic marriage to Ms Tabassum was valid, and thus precluded the Appellant from lawfully marrying Ms Mendes. Ms Patel submits that there was no evidence before the Tribunal to the effect that such a ceremony was valid under Pakistani law; she submits that under the Muslim Law Family Ordinance 1961 it is not. It had been the Appellant's clear evidence that the marriage was not legally recognised in Pakistan.

10. It was the oral evidence of the Appellant before Judge Ennals that he had undergone an "Islamic marriage" in Pakistan. As is noted above, this marriage was *prima facie* recognised as valid by the Pakistani passport authorities on the two occasions that they had issued a passport to Ms Tabassum. The real difficulty for Ms Patel in pursuing this ground, however, is that the statutory provisions upon which she relies do not in fact demonstrate that a simple Islamic marriage, a *nikah*, would not be recognised by the Pakistani state. The relevant provision of the MFLO 1961 is Regulation 5:

> '5. Registration of marriage.
>
> (1) Every marriage solemnized under Muslim Law shall be registered in accordance with the provisions of this Ordinance.
>
> (2) For the purpose of registration of marriage under this Ordinance, the Union Council shall grant licenses to one or more persons, to be called Nikah Registrars, but in no case shall more than on Nikah Registrar be licensed for any one Ward.
>
> (3) Every marriage not solemnized by the Nikah Registrar shall, for the purpose of registration under this Ordinance be reported to him by the person who has solemnized such marriage.
>
> (4) Whoever contravenes the provisions of such-section (3) shall be punishable with simple imprisonment for a term which may extent to three months, or with fine which may extend to one thousand rupees, or with both.
>
> (5). The form of nikahnama, the registers to be maintained by Nikah Registrars, the records to be preserved by Union Councils, the manner in which marriage shall be registered and copies of nikhanama shall be supplied to parties, and

> the fees to be charged thereof, shall be such as may be prescribed.
>
> (6) Any person may, on payment of the prescribed fee, if any, inspect at the office of the Union Council the record preserved under sub-section (5), or obtain a copy of any entry therein.'

11. Ms Patel submitted that since regulation 5 indicates that a *nikah* is to be registered, and that failure to do so will result in a fine, ergo a *nikah* that is not registered is unlawful. I am unable to accept that submission. The conclusion that Ms Patel draws is strikingly absent from Regulation 5. There is no doubt good reason for that. It is difficult to imagine that the statute intended to declare that a marriage conducted in accordance with principles of Hanafi jurisprudence could be rendered unlawful for a failure to comply with some civil procedure. The most that the legislature could have intended by the MFLO was to create an incentive for citizens to comply with registration requirements; it cannot have intended to declare procedures ordained by the Qur'an and *hadith* to be invalid. That this is so is confirmed by Pearl, D & Menski, W *Muslim Family Law* London, 1998 (3rd ed) who say this of Regulation 5:

> "On a close reading of this statutory provision, one does not find a definite legal requirement of registration to bring about legal validity of a Muslim marriage. In other words, a Muslim marriage in Pakistan and Bangladesh still becomes legally valid when the contract of marriage has been properly completed in accordance with the personal law, not when the marriage is registered. All that the state law can do, therefore, is to encourage Muslims to register their marriages. Non-compliance with the legal requirement to register may be penalised. Indeed, section 5 (4) of the 1961 ordinance, cited above, stipulates punishments. However, these are quite lenient fines and there is no evidence that either Pakistani or Bangladeshi law are treating non-registration as a serious offence warranting heavy penalties".

12. If the Appellant was telling the truth when he told Judge Ennals that he had undergone an Islamic marriage ceremony, Judge Ennals was quite right to conclude from that that he was validly married to Ms Tabassum in accordance with Pakistani law; in the absence of any evidence that the Appellant ever divorced Ms Tabassum he was not therefore free to marry Ms Mendes when he did.

*Ground (iii): Burden of Proof*

13. The final point raised in the grounds is that the First-tier Tribunal failed to appreciate that there was an initial, evidential burden on

the Respondent to prove that the marriage to Ms Mendes was a sham, or indeed invalid. It was this ground that led Judge Easterman to grant permission, noting as he did that Judge Ennals refers only to a burden on the Appellant at his paragraph 8.

14. It is correct to say that paragraph 8 of the determination contains only a standard direction on burden and standard, and makes no specific reference to the Respondent. I am however quite satisfied that this is immaterial, since the Respondent had discharged the burden upon her by production of the passports.

**Decisions**

15. The decision of the First-tier Tribunal contains no material errors of law and it is upheld.

16. There is no order for anonymity.

Upper Tribunal Judge Bruce
15th March 2018.