



**Upper Tribunal
(Immigration and Asylum Chamber)
EA/09234/2017**

Appeal Number:

THE IMMIGRATION ACTS

**Heard at Field House
On 16 November 2018
Extempore**

**Decision & Reasons Promulgated
On 27 November 2018**

Before

UPPER TRIBUNAL JUDGE RINTOUL

Between

**ASHRAF IBRAHIM ISMAEIL MOHAMED ELKHOULY
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr C Lam, instructed by David Tang & Co
For the Respondent: Ms A Everett, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant appeals with permission against a decision of First-tier Tribunal Judge Devittie promulgated on 30 August 2018 dismissing his appeal against the decision of the Secretary of State to refuse him a residence card as confirmation of his right to residence as the spouse (and so a family member) of an EEA national. The core of that refusal was that the Secretary of State concluded for a number of reasons that this was a marriage of convenience and on that basis the appellant was therefore not a spouse of an EEA national as defined.
2. The judge heard evidence from the appellant and from his wife ("the sponsor"). He also had before him a substantial amount of documentary

evidence. The judge accepted at paragraph [6] that some of the evidence such as the proof of the sponsor's visit to Egypt, proof of photographs taken of the family did suggest that this was a genuine, by which I understand to be a proper marriage which was not one of convenience.

3. The judge then at paragraph [7] in six sub-paragraphs set out the evidence and why he concludes that there are "legitimate reasons for concern in regard to the credibility of the claimed relationship and they are as follows". The difficulty is that what the judge has failed to do is to make any proper findings as to whether he accepted the sponsor's evidence or not. It is implicit in paragraph [7(6)] that he did accept some of it, but he has failed to say why he has not accepted it in assessing whether this marriage was a marriage of convenience or not.
4. It is unhelpful for a judge to refer to the credibility of a claimed relationship when that is not the test. The test is whether this was a marriage of convenience or not. The judge failed properly to address that test or the evidence and for these reasons his decision cannot be sustained and I set it aside as it involved the making of an error of law.
5. In the circumstances of this case I think it would be inevitable that none of the facts could be sustained and there would have to be fresh findings on all relevant issues. Whilst the issue in this case is relatively narrow, that is whether this is a marriage of convenience or not, it is I consider one which ought to be remitted to the First-tier Tribunal for a fresh decision on all issues and I direct accordingly.
6. No anonymity direction is made.

Signed

Date: 21 November 2018



Upper Tribunal Judge Rintoul