Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: EA/07618/2018

THE IMMIGRATION ACTS

Heard at Birmingham Civil Justice Centre	**Decision & Reasons Promulgated**
On 19 August 2019	**On 15 October 2019**

Before

UPPER TRIBUNAL JUDGE PERKINS

Between

ZULKARNEIN MOHAMMED AL HASSAN
(anonymity direction not made)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: The appellant appeared in person
For the Respondent: Ms E Grove, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal against a decision of the First-tier Tribunal dismissing after considering the papers the appeal of the appellant against the decision of the Secretary of State refusing him a residence card as the husband of an EEA national. Permission was given by Upper Tribunal Judge Clive Lane who indicated that in the event of the Upper Tribunal finding that the First-tier Tribunal having erred in law:

> "both parties should be prepared for the Upper Tribunal to remake the decision at the initial hearing on the existing evidence and without requiring a resumed hearing".

2. Several grounds were raised but the fundamental difficulty for the respondent is that the First-tier Tribunal Judge said that it was for the appellant to prove the case on a balance of probabilities but this is a case where the Secretary of State alleges that the appellant has entered into a marriage of convenience and it is clear, following the decision of the Supreme Court in **Sadovska and Another v SSHD [2017] UKSC 54**, that this is an allegation that the Secretary of State must prove. It follows that the First-tier Tribunal's decision is fundamentally flawed and I set aside the decision and proceeded to hear evidence and submissions in order to remake the decision.

3. Although the marriage is alleged to be one of convenience it is not doubted that the marriage is lawful even though it was a marriage by proxy in Ghana on 1 December 2017.

4. The appellant and his wife had produced a "Statement in Support of the Appeal" dated 11 December 2018. I have read it. It is more in the nature of written submissions than evidence going to issues in the appeal. It does, however, include a useful summary of the appellant's immigration history.

5. It shows that he claims to have entered the United Kingdom as a visitor on 16 October 1999. He applied "to regularise his stay" in October 2000 and his application was refused in July 2002.

6. It also identifies a dispute with the Respondent. According to the appellant, the respondent claimed that the appellant "was removed" during the period 15 October 2004 and 12 January 2005" but the appellant denies being "deported" and asserts that the respondent is unfairly prejudiced against him because of a false immigration history. The Appellant has not shown that the application that led to this appeal has been prejudiced in any way.

7. An application for leave as a student was refused on 29 August 2007.

8. An application for leave on "private and family life" grounds was refused in July 2013.

9. On 1 September 2014 he applied for a residence card confirming a right to reside because his marriage to a French national. This was application was refused in April 2015.

10. On 30 April 2015 he applied for leave to remain on "private and family life" grounds. The application was refused on 10 February 2016.

11. On 26 March 2018 he applied for a residence card confirming his right to reside with his present wife, a Dutch national. The application was refused on 22 November 2018 and that is the decision complained of.

12. The Secretary of State had produced a copy of the interview records between the appellant and his wife and I gave him an opportunity to consider them. The appellant did not object to their being relied upon before me.

13. In the course of her interview the appellant's wife explained that she is the mother of four children. The younger two children are the children of the appellant. There are birth certificates showing that she is the mother and the appellant is the father of a daughter born in October 2014 and a son born in June 2016.

14. She said that the appellant and all of the children lived with her at the same address. She also said that the older two children had the same father and saw their father "every so often but she could not remember when". He lives in Holland. She is a Dutch national.

15. She also explained that they had moved house since the application form was completed. The removal was in April 2018. She gave details about their life together and practical details such as where they were registered with a general medical practitioner. She explained that her husband was still registered with a doctor in London, that she was at their new address. She denied that she had ever lived with her husband in the same house in London. She was asked when she first met her husband. She was trying to recall she thought it was probably 2012 but it could have been 2011. She said that she was no longer in a relationship with her former partner. That relationship ended when she discovered she was pregnant. She did know that she had met her husband in England in Wembley.

16. I find the answers recorded at question 95 particularly significant. The appellant's wife was asked about how her relationship with her husband began and, following answers that made the question appropriate, she was asked "were you heavily pregnant at the time that you met?" The reply recorded is "yes, pretty much". Using the date of the child's birth as a reference point it was suggested that she must have met the appellant in the middle of the year. She accepted that but was still trying to work out if they met in 2011 or 2012. She seemed unable to give clear answers about how their relationship developed but laughed when asked about whether they exchanged telephone numbers at their first meeting. She said rather coyly perhaps that they would both prefer it if she said that he said he wanted to phone her.

17. The appellant's wife said that she moved permanently to the United Kingdom in 2013 or possibly 2012 (question 123) and that was when their relationship became "exclusive". She knew her husband had been previously married but did not know much about that marriage. She expressed her disappointment that her husband had not given her a wedding ring.

18. Her husband, the appellant, was interviewed at considerable length. When the appellant was interviewed he was uncertain about the date on

which he had met his wife. He decided it was in 2013 but he could not remember the month. It was towards the end of the year. At question 109 he accepted his wife had two children when they first met and he confirmed this with his response to question 110. Clearly this was something that interested the interviewing officer because it was contrary to his wife's account and the question was put again at 113 where the officer said: "So, at the time you met her, she had already had these two children?" and the appellant replied "yeah, she had".

19. He was also asked questions about someone called Mavis who he said was no longer in his life. Mavis was of interest to the Immigration Officers because the appellant had made an earlier application of some kind to stay on in the United Kingdom because of his relationship with "Mavis" but he withdrew that application. Additionally he claimed to have been married to a French woman for about a year. The appellant thought that he married a "French woman" on 28 May 2014 and they divorced "somewhere in the middle of 2015". He was asked at question 192 if he was "in a relationship with the French and with your wife at the same time?" and he replied "no, I call it a girlfriend, Mavis".

20. At question 195 he was asked:

> "So, you've made an application with two women at the same time. You made separate applications, at the same time that you say you started a relationship and you were in an exclusive relationship with your wife. Have you told your wife about Mavis?"
>
> He replied "Mavis don't exist in my life".

21. There were other inconsistencies that were thought remarkable. The appellant's wife had said that she last travelled with her children to the Netherlands in 2017 and stayed for one week with her family but the applicant said that since they had been together his spouse had not returned to the Netherlands.

22. The appellant gave evidence before me.

23. He had explained that his wife was not attending. She had travelled to Ghana to see her father who was ill. She had left the United Kingdom on 24 July 2019 and was expected back shortly after the hearing (I think 23 August). It was described as "an emergency trip".

24. He knew that they married by proxy on 1 December 2017 and he indicated where they started to live together.

25. Predictably and appropriately, in cross-examination he was asked if his wife was pregnant when they first met. He was reluctant to answer the question and when pressed said that he did not know. When he was reminded of what he had said in interview he said that his wife did have two children when they met. He was asked to explain why his wife had said that she was heavily pregnant at the time. He did not know.

26. He had produced a letter from the school to indicate that his wife had approached the school for permission to take them to Ghana. That letter does not refer to him in any way and is of no evidential significance as far as these proceedings are concerned beyond suggesting that this still some contact between the appellant and his wife. He thinks his father-in-law has cancer "or something". He then said the tickets were purchased some time in February.

27. I have read the papers. I am not particularly concerned about some of the difficulties in the evidence. It would not have harmed the appellant's claim to live as a nuclear family if he had known the colours of his children's school uniform but I do not find his hesitancy damaging. Not everyone notices colours. I also accept that some people find it easier to remember dates than do others and that not all marriages are characterised by faithfulness.

28. The inability of the appellant and his wife to agree about her being heavily pregnant (not merely pregnant) when they first met is troubling. It is surely something that they would both remember about a first meeting. It must be an unusual start to a romantic relationship. Clearly they did have a first meeting. For some reason they do not want to tell the truth about it and they have been caught out in a lie.

29. It is also a matter of real concern to me that the appellant's wife was not present. I do not accept that she was on an emergency trip to Ghana. The trip was arranged in February. It may well be that her father is very poorly. It may well be that she wants to see him whether he is poorly or not but emergency meetings in August are not arranged in the previous February.

30. I also recognise the fact that there may be unhappiness in the marriage now is only of some value in illuminating the nature of the relationship when it began. Nevertheless the lack of support from the appellant's wife is a startling omission in his case.

31. I also found the appellant a very unsatisfactory witness. There were several times in his evidence where he seemed to be hesitating before answering what appeared to be a straightforward question. I do not read too much into this but it adds to the picture of somebody who was untruthful.

32. I have considered the documentary evidence that tends to show some cohabitation and the photographs that tend to show the appellant with (I assume) this wife and the four children of the family but such evidence is not very helpful. The documents supporting cohabitation say nothing about the reasons for commencing the relationship or its nature and do not prove that the parties actually live together.

33. The photographs only show that two adults and four children appear to be on good terms in an instant when the photograph is taken.

34. The appellant has made several applications for permission to, or proof of entitlement to, remain in the United Kingdom. Whilst this might in some circumstances suggest responsibility, here it suggests desperation. The claims have all been weak and rejected and his reliance on relationships that have proved to be less than long lasting tends to suggest that he is ready to claim that they are stable and significant relationships when they are not.

35. It is extraordinary that the appellant and his wife cannot agree about her being heavily pregnant when they first met. One of them is clearly not telling the truth. It is obvious that it is an inconsistency that would prompt inquiry and it has not been addressed. If the appellant's wife really could not attend the hearing he could have asked for an adjournment and if that application was refused she could at least have served a detailed statement. I can only conclude that the appellant and is wife are unable to tell the truth about how their relationship began because there is something that they believe would damage the appellant's case if they told the truth.

36. I find it probable that the marriage was contrived for immigration purposes. The Respondent has persuaded me that this is probably a marriage of convenience.

37. A marriage of convenience can become a genuine marriage (although such a marriage would still have been a marriage of convenience) and the birth of two children is clearly something to consider. However I am not satisfied that their relationship ever developed into a supportive marriage. I cannot attach much weight to the wife's evidence. There is not much that is important in her signed statement and she did not attend to be cross-examined.

38. In the absence of the wife and any independent evidence I do not accept that the appellant actually lived together for any significant time. Clearly they had some contact because they have children and the production of a letter from the school suggests that they are in touch with each other but this does not persuade me that they established a durable relationship.

39. It follows therefore that although I find error of law in the decision of the First-tier Tribunal and set aside this decision I remake the decision and dismiss the appellant's appeal.

Notice of Decision

The First-tier Tribunal erred in law. I set aside its decision and I substitute a decision dismissing the appellant's appeal.

Signed
Jonathan Perkins

Judge of the Upper Tribunal Dated 11 October 2019