Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: EA/07850/2018

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 12 June 2019	On 20 June 2019

Before

UPPER TRIBUNAL JUDGE PICKUP

Between

BAJRAM GJANA
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr P Harris, instructed by Solon Jacobs & Gold
For the Respondent: Ms N Willocks-Briscoe, Senior Home Office Presenting Officer

DECISION AND REASONS

This is the appellant's appeal against the decision of First-tier Tribunal Judge Obhi promulgated 18 April 2019 dismissing his appeal against the decision of the Secretary of State dated 6 December 2018 to refuse his application for an EEA residence card as the spouse of an EEA national exercising treaty rights in the UK, namely Ms Denisa Hubackova, a citizen of the Czech Republic.

First-tier Tribunal Judge Page granted permission to appeal to the Upper Tribunal on 15 May 2019.

Error of Law

In the first instance I have to determine whether or not there was an error of law in the making of the decision of the First-tier Tribunal such that it should be set aside.

In granting permission to appeal Judge Page purported to grant permission to appeal on ground 2 only on the basis that it is arguable that there has been procedural unfairness because the judge gave the appellant no opportunity to answer points found against him on matters that were not raised or relied on by the respondent.

However, in the decision of the Upper Tribunal in Safi & Ors (permission to appeal decisions) [2018] UKUT 00388 (IAC) it was held: "It is essential for a judge who is granting permission to appeal only on limited grounds to say so, in terms, in the section of the standard form document that contains the decision, as opposed to the reasons for the decision." In other words, a limitation of permission to appeal in this case should have appeared above that line and followed the words "permission to appeal is granted."

It follows that there has been no effective limitation of the grounds of appeal to the Upper Tribunal and I proceed accordingly to consider both grounds of appeal.

The grounds can be summarised as follows. First, that the judge made a material error of fact relying on Ms Hubackova's return to her native Czech Republic for a month's holiday as a matter telling against the appellant or, more accurately, the credibility of the marriage not being one of convenience. The judge at least implicitly suggested that she made a surprising decision in December 2017 to separate from her newly married husband, which alleged fact undermined the credibility of the marriage as not one of convenience. It is pointed out that although it was after they moved in together in October 2017, the holiday took place long before the marriage, which was not until November 2018. In fact, they did not become engaged until February 2018. It is submitted that this error was material and that it was key to the assessment as to whether or not the marriage was one of convenience.

In his submissions to me, Mr Harris also pointed out that the facts of this case are perhaps not typical of an alleged marriage of convenience and there were limited other issues of significance relied on, which, it is submitted, made this error more significant. The second ground follows on from the first, that the respondent did not rely on this Czech holiday in the refusal decision, which is largely based on the contents of the marriage interview and on an explanation about a sum of money sent to Albania. Neither, it is said, was this issue of the visit to the Czech Republic put to the appellant or the sponsor during the hearing, which would have allowed them to correct the alleged misapprehension that the holiday was a long separation from the newly married husband.

It is argued that at paragraph 27 of the decision, when the judge stated that it was "still noteworthy," the Tribunal clearly drew a significant adverse inference from the return of the sponsor to the Czech Republic in December 2017, and of course it is argued that no opportunity was given to the appellant or the sponsor to address and correct this apparent mistake at the hearing, or at the

very least before that matter was relied on in making the decision dismissing the appeal. I accept the submission that this issue was clearly relevant to the decision and the overall assessment of the credibility of the relationship and as to whether it was or was not a marriage of convenience. However, for the reasons I am about to set out, I do not accept that it was a mistake of fact or a matter that needed to be put to the appellant during the hearing.

As Ms Willocks-Briscoe has pointed out, the judge does not quite say what is suggested in the grounds. The judge in fact said: "It is still noteworthy that she went for the month and not a shorter holiday so that she could spend time with her husband." By the time of the hearing, of course, the appellant had become the husband of the sponsor. Considering the paragraph as a whole, I am not satisfied that the judge was there making a mistake of fact by thinking that the sponsor had gone off alone for a month's holiday, leaving behind her newly-married husband. I am fortified in that conclusion by looking at paragraph 36 of the decision, where the judge added: "Also important is the fact that the sponsor went home shortly after they moved into the same accommodation. This suggests that her family visit was of more importance to her and undermines that claim that this is a genuine relationship." It is clear from this that the judge was well aware and did not lose sight of the fact that the parties were not married at the time of the holiday but nevertheless the judge still thought it significant that after they moved into the same house in furtherance of an alleged relationship she took a lengthy holiday. It was open to the judge to conclude that this uncontested fact suggested that the family visit was of more importance to her that her relationship with the appellant, and it was open to the judge, and reasonably so, to conclude that, in addition with the other matters relied on, this fact further undermined the claim that this was a genuine relationship.

In all the circumstances, I find, for the reasons given above, there was no material error of law in this decision. Looking at all the evidence in the round, the judge was entitled to take a view as to the nature of the marriage and made an adequately reasoned and correctly based in fact decision, leading to the dismissal of the appeal.

Decision

The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law such that the decision should be set aside.

The decision of the First-tier Tribunal stands and the appeal remains dismissed on all grounds.

I make no anonymity direction.

Signed

Upper Tribunal Judge Pickup
Dated 12 June 2019

To the Respondent
Fee Award

I make no fee award, the appeal having been dismissed.

Signed

Upper Tribunal Judge Pickup
Dated 12 June 2019