



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: EA/08363/2017

THE IMMIGRATION ACTS

Heard at Field House

On 3 April 2019

Decision given orally after hearing

**Decision & Reasons
Promulgated
On 16 May 2019**

Before

UPPER TRIBUNAL JUDGE CRAIG

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

and

**MR ELVIS AGEBOH LEKEATE
(ANONYMITY DIRECTION NOT MADE)**

Appellant

Respondent

Representation:

For the Appellant (Secretary of State): Mr D Clarke, Senior Home Office
Presenting Officer

For the Respondent (Mr Lekeate): Mr T Mahmood, Counsel, instructed by ASL
Solicitors & Advocates

DECISION AND REASONS

1. This is the Secretary of State's appeal against a decision of First-tier Tribunal Judge Sangha, promulgated on 20 June 2018 following a hearing at Birmingham on 16 March 2018, in which he allowed Mr Lekeate's appeal against the Secretary of State's decision refusing to grant him an EEA residence card as the spouse of an EEA national exercising treaty rights in the UK. For ease of reference, throughout this decision, I shall refer to the Secretary of State, who was the original respondent, as "the Secretary of State" and to Mr Lekeate, who was the original appellant, as "the claimant".
2. The claimant is a national of Cameroon who was born in April 1987. He entered the UK in 2014 with entry clearance as a Tier 4 Student valid until 30 January 2016. He sought a Tier 2 visa for leave to remain in November 2015 (that is at a time when he was still here lawfully) which was refused but prior to the expiry of his then current visa in January 2017 he sought leave to remain on the basis of his Article 8 family and private life rights which was refused. It seems he sought further leave to remain in March 2017 (after the expiry of his leave) which was rejected but then in April 2017 he applied for an EEA residence card as the spouse of an EEA national exercising treaty rights in the UK following his marriage to which reference will be made below.
3. This application was refused by the Secretary of State in a decision made on 22 September 2017 and it is in respect of this refusal that the claimant appealed to the First-tier Tribunal and as already noted, following a hearing at Birmingham in March the following year 2018, in a decision and reasons promulgated some three months later on 20 June 2018, his appeal was allowed by First-tier Tribunal Judge Sangha. The Secretary of State now appeals against that decision, leave having been granted by First-tier Tribunal Judge Elizabeth Simpson on 23 July 2018.
4. The basis of the claimant's application was that he was married to his EEA national sponsor, Ms [LM], and she was exercising treaty rights in this country. It is accepted by the Secretary of State that there was factually a marriage between the parties in April 2017 (permission of the Secretary of State was sought prior to this marriage) and it is not contended on behalf of the Secretary of State either that Ms [M] is not an EEA national or that she was not at the relevant time exercising treaty rights in this country. It was considered by the Secretary of State that the "marriage" was a sham marriage, that is a marriage of convenience, in that the parties did not genuinely intend to continue living with one another but entered into the marriage in order to facilitate the grant of a residence card to the claimant.

5. The couple, that is the claimant and his spouse, were both interviewed on 11 September 2017 and it is the Secretary of State's case that those interviews contained a number of discrepancies. Following a home visit on 11 April 2017, that is just one week after the date of the marriage, to the claimant's sister's house, during which the claimant was discovered hiding in a cupboard, and having regard to the disparities in the interview, the Secretary of State reached the conclusion that the marriage was not a genuine one.
6. Reasons are set out in the refusal letter to which this Tribunal has had regard, but it is not necessary for the purpose of this decision at this stage to set out these reasons in full. Where necessary reference will be made to the reasons below. For the purposes of this decision I shall not set out either all the arguments which were made before this Tribunal on behalf of the parties but I have had regard to everything which was said to me as well as to all the documents contained within the file, whether or not specific reference is made to any individual part of the submissions or documents below.
7. In his decision, having heard evidence from the claimant and his spouse, who were both cross-examined, and following consideration of all the documents (which are specifically referred to at paragraph 5 of his decision) Judge Sangha decided that the claimant and his spouse were telling the truth and that he believed their account which was that this was a genuine marriage between a couple who intended to live together permanently and was not simply a marriage of convenience as the Secretary of State believed. At paragraph 23 the judge referred to the relevant law and in the earlier paragraphs which are quite lengthy he dealt with much of the evidence specifically. When dealing with his findings of fact at paragraph 18 he begins by saying that he had heard evidence "from both the appellant and his wife and I found them to be generally credible witnesses and I accept their evidence they started and established a relationship in August 2015".
8. He goes on to record some of the evidence as follows:

"They decided that they did not want to marry straightaway because the appellant's new spouse had a previous relationship out of which she had two children who lived with their father in France whom she went to see on a regular basis."
9. The judge then refers to difficulties with the claimant's application to renew his visa during which time the evidence before the judge was that the claimant had "continued to live with his sister and her children".
10. Then at paragraph 19 (which is a very long paragraph amounting to almost an entire page) the judge records how the claimant and the sponsor had given notice to marry and that the Secretary of State had granted permission to marry and how at the same time the claimant had lodged an application for leave to remain on the basis of his family life with his sister and her children. The judge says that he accepts the

claimant's evidence that he had not made any other application other than that application on human rights grounds, although this appears on its face inconsistent with what is stated earlier at paragraph 2 where the judge refers to an application being made in January 2017 on the basis of the claimant's family and private life followed by another application on the basis of family and private life made in March 2017. However Mr Clarke on behalf of the Secretary of State has not taken any point with regard to this possible inconsistency within the judgment and it does not appear to this Tribunal to be material to the decision now in issue.

11. A point was taken by the Secretary of State in the refusal letter that had it been a genuine marriage it would have been expected that the claimant's sister would have attended that marriage which she did not. However the judge records that both the claimant and the sponsor had said that she had other commitments because she was "a business owner" and for some reason which is not entirely clear was unable to attend the marriage. The point is taken both in the grounds and also by Mr Clarke in argument before this Tribunal that the judge does not specifically deal with this argument and that it was not adequate reasoning for him merely to accept the account of the claimant and the sponsor his spouse without hearing some evidence from the claimant's sister herself. Apparently the claimant's sister was present at the hearing before the First-tier Tribunal but she was not tendered for cross-examination. Mr Clarke suggests that absent such cross-examination there was not adequate evidence before the Tribunal to allow the First-tier Tribunal Judge to accept any explanation as to why this lady had not been at the wedding. Mr Mahmood's instructions are that Counsel representing the claimant at the hearing before the First-tier Tribunal had stated in terms that the sister would be prepared to answer any questions if anybody thought she ought to but that neither the judge nor importantly the Home Office Presenting Officer at that hearing considered that this was necessary.
12. One of the Secretary of State's reasons for suggesting that the reasoning of the judge is inadequate is that insufficient weight was given to this particular gap in the evidence before him and/or that this aspect of his decision was inadequately reasoned. The way Mr Clarke put his case on this point, and the others to which reference will be made below, is that the judge, having found initially that the Secretary of State had satisfied the original burden of proof which was on him to show that the marriage may very well not be a genuine one, the burden then shifted to the claimant to show that the marriage was in fact a genuine one. However, Mr Clarke accepts that notwithstanding the shifting burden of proof, the overall burden remains on the Secretary of State throughout.
13. The other arguments made on behalf of the Secretary of State include the failure of the judge to deal at all with the point made in the first bullet point at page 2 of the refusal letter. In this the Secretary of State had noted that the claimant had claimed that his spouse had travelled to France over the previous two weeks and that apparently the claimant did not know how old the sponsor's two children's father (that is the father of

his wife's children) was, or if he worked or if he had any medical problems. He also did not know the type of accommodation his wife had stayed in or who she stayed with. He had apparently suggested that the house that his wife had stayed in may have been the one she had before her divorce but all he could confirm was that she stayed with her children but he did not know if this was throughout the time she was there or if they spent time back with their father. The claimant also did not apparently know what family his wife had in France.

14. This was not entirely consistent with the evidence given by the claimant's spouse, who confirmed that the father of her children was retired and because he was rather older, certainly than the claimant, being over 60 years old, suffered from various medical ailments such as diabetes. (The claimant's wife no doubt considers that being over 60 is an advanced age.) In any event none of this was dealt with specifically by the judge in his decision.
15. The Secretary of State has also relied within the refusal letter on the fact (as noted above) that when the Immigration Officers had visited the claimant's sister's house in order to carry out investigations as to whether the marriage was genuine, when he saw them coming the claimant hid in a cupboard, which it is said indicated that the application was not an honest one. It was suggested also that he was not cooperative. It is said further that this was something that apparently the claimant never told his wife which it is suggested he would have done had this been a genuine relationship. While in his decision the judge does deal with the undisputed evidence that the claimant had indeed hid in a cupboard he records at paragraph 19 that "The appellant has not attempted to deny that fact and says that he was simply scared and consequently hid in the wardrobe". He goes on to say that the claimant "denies that he failed to cooperate with the Immigration Officers and denied that he ever stated that he was not cohabiting with his wife" (that is at paragraph 19). At paragraph 10 the judge had said earlier that "the appellant asserts that although he initially hid in a wardrobe when the Home Office officials attended at his residence he nevertheless fully cooperated with them and answered all their questions and denies being uncooperative". The judge also records the claimant's assertion that the couple continue to reside at his sister's address, which is the address where he was found hiding in the cupboard.
16. The point made on behalf of the Secretary of State is that the judge has failed to understand it seems that the relevance of this particular challenge is not just that the claimant had hidden within the cupboard but that he had not told his wife that this had happened, which it is argued suggests that this was not a genuine marriage because the parties were not communicating as one would expect a couple to communicate.
17. In answer to this point it is said on behalf of the claimant that the evidence was that the applicant did not tell his wife because he was ashamed (this is not a matter recorded within the decision) and that, as the judge did record, the reason he hid in the cupboard was because he was scared.

18. Some other points are taken on behalf of the Secretary of State as well, such as that the judge made no finding as to whether or not there was some disparity concerning whether the couple had been saving to buy a property together. It is also submitted that there had not been evidence that the claimant was employed, although in this regard it would perhaps be a little odd if such evidence had been volunteered by the claimant who did not have permission to work. It is noted however that the Secretary of State has not taken issue with the claim that the sponsor was working in this country, which she would have had to be in order to be exercising treaty rights.
19. Essentially the Secretary of State suggests that in the face of very strong evidence the judge needed to deal far more fully with the reasons given by the Secretary of State for finding that the marriage was a sham marriage and that he should not just have accepted the evidence of the claimant and his spouse at face value.
20. In response to these submissions essentially Mr Mahmood submitted that the judge had set out the law correctly and although he had not dealt specifically with everything he had summarised the evidence, having set out at paragraph 5 all the evidence which had been put in front of him. He had found that the chronology given by the couple was accurate and accepted the reasons given as to why the claimant's sister had not attended the marriage. The judge's findings had been open to him.

Discussion

21. The task of this Tribunal is not to remake the decision (absent finding of material error of law by the First-tier Tribunal Judge) but to consider whether or not the findings made by the First-tier Judge were findings open to him on the evidence and are adequately reasoned. This Tribunal did not hear the evidence and cannot say whether or not had it been in the position of the First-tier Tribunal it would necessarily have made the same decision. However, in this Tribunal's judgement, the judge set out the law correctly, looked at all the evidence which had been adduced and gave reasons why he made the findings he did. He heard two witnesses who were both cross-examined, acknowledged that there had been some discrepancies within the evidence but considered also that a number of the answers the witnesses had given were consistent and helpful to their case. Having considered all the evidence in the round he believed that the claimant and the sponsor had been telling the truth.
22. A judge in a case like this is not required to set out every single piece of evidence in full (as this Tribunal has not done either; it is sufficient if he or she writes enough so that both parties know the reasons why the decision has been made. This decision is in the judgment of this Tribunal adequately reasoned and is by no means over short, running to some nine pages, which have clearly been proofread carefully and in which the judge

has summarised his findings. He was entitled having heard the evidence to believe the witnesses and has given adequate reasons for so doing. While another judge on the same evidence may have made different findings, the findings that this judge made were open to him and are adequately reasoned.

23. It follows that this challenge of the Secretary of State must fail and I will so order.

Decision

This appeal by the Secretary of State is dismissed and the decision of the First-tier Tribunal, allowing the claimant's appeal against the Secretary of State's decision refusing to grant him an EEA residence card, is affirmed.

No anonymity direction is made.

Signed:

A handwritten signature in black ink, appearing to read "Ken Craig". The signature is written in a cursive style with a long vertical stroke at the end of the name.

Upper Tribunal Judge Craig
2019

Date: 13 May