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**First-tier Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: EA/07598/2017

THE IMMIGRATION ACTS

**Heard at Manchester Piccadilly
On 31 January 2018**

**Decision and Reasons Promulgated
On 02 February 2018**

Before

JUDGE OF THE FIRST-TIER TRIBUNAL D BIRRELL

Between

**WASEEM SAJJAD AWAN
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Faryl counsel instructed by Knightsbridge Solicitors

For the Respondent: Not represented

DETERMINATION AND REASONS

1 There was no application for anonymity in this case.

2 Respondent: There was no appearance by or behalf of the Respondent. I was satisfied that the requisite notice of hearing had been served on the Home Office. There is on file no satisfactory explanation for the Respondent absence simply an email dated 30 January 2018 notifying the tribunal that there would be 'No PO' in the court for this list . There was an application for an adjournment. Given the absence of any explanation for

why no HOPO was able to present the list and when the Respondent became aware of this I refused the adjournment. I took into account that the case before appeared to be relatively straightforward and the overriding objective to deal with cases fairly and justly avoiding delay wherever possible.

3 The Appellant is a citizen of Pakistan born on 31 March 1991. The Appellant is appealing against the decision of the Respondent made on 23 August 2017 to refuse to grant an EEA Residence Card by virtue of European Community Law as the spouse of a European Economic Area national namely Daniela Cioca who he claimed was exercising rights of free movement under the treaty of Rome in the United Kingdom.

4 The refusal was on the basis that the requirements of Regulations 2 of the Immigration (European Economic Area) Regulations 2006 ('The Regulations') were not met.

5 Regulation 7 sets out which family members are considered to be family members of an EEA national and therefore entitled to apply for a residence card. The definition includes the spouse of an EEA national except where the marriage is a marriage of convenience.

6 The Notice of Refusal indicates that the Respondent was not satisfied that the Appellant fulfilled the requirements of the Regulations. The Respondent's reasons can be summarised as follows:-

- (a) There were significant inconsistencies and conflicting answers in the marriage interview which took place on 23 August 2017 following their marriage on 3 October 2016.

The Law

7 In Rosa [2016] EWCA Civ it was held that the legal burden was on the SSHD to prove that an otherwise valid marriage was a marriage of convenience so as to justify the refusal of a residence card under the EEA Regulations. The legal burden of proof in relation to marriage lay on the Secretary of State, but if she adduced evidence capable of pointing to the conclusion that the marriage was one of convenience, the evidential burden shifted to the applicant (paras 24 – 27). In case of Miah (interviewers comments:

disclosure: fairness)[2014] UKUT 00515(IAC) the President of the Tribunal summarised the law as set out in Papajorgji (EEA spouse – marriage of convenience) Greece [2012] UKUT 00038(IAC) stating that :

“However there is an evidential burden on the Claimant to address evidence justifying reasonable suspicion that the marriage in question was undertaken for the predominant purpose of securing residence rights”

8 The 2016 regulations (reg 2) now define a marriage of convenience: “marriage of convenience” includes a marriage entered into for the purpose of using these Regulations, or any other right conferred by the EU treaties, as a means to circumvent – (a) immigration rules applying to non-EEA nationals (such as any applicable requirement under the 1971 Act to have leave to enter or remain in the United Kingdom); or (b) any other criteria that the party to the marriage of convenience would otherwise have to meet in order to enjoy a right to reside under these Regulations or the EU treaties.”

9 In relation to this issue I have also taken into account Sadovska v SSHD [2017] UKSC 54 that the objective to obtain the right of entry and residence must be the predominant purpose for the marriage to be one of convenience and a marriage could not be considered to be a marriage of convenience simply because it brought an immigration advantage. *“Should the tribunal conclude that Mr Malik was delighted to find an EU national with whom he could form a relationship and who was willing to marry him, that does not necessarily mean that their marriage was a “marriage of convenience” still less that Ms Sadovska was abusing her rights in entering into it”*.

10 In relation to the absent marriage interview record I take into account what was said in Miah (interviewer’s comments: disclosure: fairness) [2014] UKUT 00515 (a case concerning a false marriage in an EEA appeal) it was held that the respondent's decision making process included a process whereby comments, or opinions, of an interviewing officer were conveyed to the decision maker. In the generality of cases, this practice would not contaminate the fairness of the decision making process. The duty of the decision maker was to approach and consider all of the materials with an open mind and with circumspection. The due discharge of this duty, coupled with the statutory right of appeal, would provide the subject with adequate protection. However, the document enshrining the interviewer’s comments – Form ICV.4605 – must be disclosed as a matter of course. An

appellant's right to a fair hearing dictated this course. If, exceptionally, some legitimate concern about disclosure, for example, the protection of a third party, should arise, this should be proactively brought to the attention of the Tribunal, for a ruling and directions. In this way the principle of independent judicial adjudication would provide adequate safeguards for the appellant. This would also enable mechanisms such as redaction, which in practice one expected to arise with extreme rarity, to be considered.

11 In relation to the relevant date I have considered Boodhoo and another (EEA Regs: relevant evidence) [2013] UKUT 00346 (IAC) where it was held that in an EEA appeal, a tribunal has power to consider any evidence which it thinks relevant to the substance of the decision, including evidence which concerns a matter arising after the date of the decision.

Evidence

12 On the file I had the Respondents bundle. This did not include either a transcript of the marriage interview in this case or the interviewer's comments. I had a copy of the reason for refusal letter. The Appellant put in an appeal and a bundle of documents 1-128.

13 I also heard evidence from the Appellant and his wife and adopted the contents of their statements confirming that they were true.

14 I asked both if they had mobile phones with photographs of their spouse. Both produced their mobile phones so that I could examine their photographs. Paul Albert also attended court to give evidence but I indicated that I did not need to hear from him.

Final Submissions

15 In the absence of the HOPO I have assumed that they would rely on the reason for refusal letter.

16 On behalf of the Appellant Ms **Faryl** relied on the documentary evidence and the oral evidence of the Appellant and his spouse.

Findings

17 On balance and taking the evidence as a whole, I have reached the following findings

18 The Appellant is a 26 year old citizen of Pakistan who has applied for a residence card by virtue of European Community Law as a confirmation of his right to reside in the United Kingdom as the spouse of an EEA national.

19 The key is whether there is whether this is a marriage of convenience or a marriage undertaken purely to obtain a residence document to stay in the UK.

20 I heard brief evidence from the Appellant and his wife and found both to be credible witnesses.

21 The Appellant came to the UK as a student with a visa issued on 15 September 2013 that expired on 6 September 2016. He was studying for an Honours Degree in Law at BPP (which he had almost completed) and on 3 September 2016 he made an application for a residence card which was refused. He gave evidence that his application for further leave under the Immigration Rules was in the hands of BPP being process and as far as he understood there was no reasons why he would not be granted a further period of leave in order to complete his degree. On 29 March 2017 the Appellant made a further application for a residence card and it was the refusal of that application that is the subject of this appeal.

22 There is no challenge to the fact that the Appellant and sponsor are legally married as I have a copy of their marriage certificate at pages 14-18 of the Appellants Bundle (AB). There is evidence on file that they lived together and continue to do so at a common address. I remind myself that the legal burden is on the Respondent to prove that an otherwise valid marriage was a marriage of convenience so as to justify the refusal of a residence card under the EEA Regulations. The reasons for refusal are based on alleged inconsistencies in the marriage interviews. I have not been provided with a copy of the marriage interviews or indeed the interviewers comments as required by Miah only summaries of those matters which are alleged to be such inconsistent answers in the refusal letter. The Respondent is required to produce copies of all the documents on which they wish to rely in the appeal. In the absence of such a transcript I am unable to put the responses given in any kind of context: were these 12 inconsistencies in the context of 100 correct answers or was it a relatively short interview; what is the level of detail in relation to those answers that are correct and what topics are addressed; is the summary of the response by the Respondent a fair characterisation of the answer given by the Appellant

and Respondent; did the interviewee appear to understand the questions that were put or did any of them have to be explained or re asked.

23 I take into account in relation to the Sponsor that she attended the interview without an interpreter because she was advised by a previous representative that given their apparent absence of a common language it might undermine their case if she requested an interpreter. This was of course not entirely poor advice if the sponsor was unable to speak English at all. I heard evidence from her in English and she spoke it well but confirmed to me that she wanted the security of an interpreter in court with her (one had been requested) in case there were any issues that she did not completely understand given her experience in the marriage interview where she found the interviewer was aggressive, had a strong accent and did not explain the process. I may have been able to resolve some of these issues with an interview record: in its absence and having heard from the Sponsor I found her claim credible.

24 In relation to the assertion that in the interview that the Sponsor did not know which Pakistani Language the Appellant spoke before stating she thought it was Urdu is not an inconsistency rather a lack of knowledge that I do not find in the least surprising. It is alleged that the Appellant was unaware whether his wife went to college: he disputes this and states that he clarified that his wife went to college but he was unsure if she went to University. I accept this explanation. In relation to when they registered with a GP , whether it was together or they had previously registered given that they had both lived in the same area for some time prior to moving in together I accept that it is likely they were already registered as they now assert and any apparently different response given by the sponsor was due to language difficulties. There is a claimed inconsistency in relation to the agreed fact that the Appellant attended hospital with the sponsor for an ultrasound arising out of painful periods: given the amount of agreed detail as to her gynaecological problems and how it was treated whether the GP sent her as she stated or they simply attended A and E seems to me a minor difference .

25 How they first met is set out and they agreed it was at the Printworks in Manchester when he was working and she was with friends when he came over: I can discern little difference given that he states he was working as a security guard standing outside a cinema which was right next to a bar where she was having a drink with friends. The response about the first date again is largely agreed: they went to a Turkish restaurant

and there is a discrepancy as to whether they went home on the same bus given they lived in the same area or separately: the Appellant suggests that the sponsors claim they travelled separately may have been an interpretation problem. Whether they had help moving in together is explained at AB A5 : the Appellant states they largely did this together but on another occasion the Sponsor may have had help from the landlords son as he had a car. The account of the marriage proposal was largely consistent in a number of details apart from whether the Appellant stated that Café Italia was a bar: the Appellant disputes saying this. In the absence of the interview record I accept his account. The proposal of marriage account appears to be quite convoluted even as summarised in the refusal letter: I am not prepared to consider any other claimed inconsistency in the absence of the record.

26 There is no challenge to the fact that the Appellant and Sponsor are married but neither could remember the day of the week and they give different accounts of the time although both agreed that they were picked up in the morning by taxi.

27 I do not find it surprising that the Sponsor could not name the witnesses given that they were friends of the Appellant.

28 The only other discrepancy that is unaddressed is that the Appellant states they stayed in each others homes before marriage and the Sponsor says they didn't.

29 I do not accept that these responses can be fairly described as 'major discrepancies' or 'significant differences'. Those answers that are discrepant are either relatively minor or reflect a lack of knowledge or lack of detail about matters that are only important in a marriage interview but there are also instances where the parties dispute the claimed inconsistency because of the recorded answer. In the absence of a record of interview those matters which might be able to be resolved by looking at the record I am unable to resolve. I would not find it surprising that any genuinely married couple might not get 'full marks' in a marriage interview. Looking at the interview in so far as I am able in the absence of all those responses that the parties undoubtedly got right I am satisfied that this interview was insufficient to satisfy the legal burden on the Respondent to establish that this was anything other than a genuine marriage.

30 Even if I were wrong about this I heard evidence from both Appellants and found them to be credible as to the nature of their relationship. I note that there were a few

photographs of their life together in the bundle. I asked both the Appellant and the Respondent in turn whether they had photos of their partner on their mobile phones and could I see them. Both readily produced their phones. The Appellant had numerous photographs of himself and his wife in various situations, in Manchester and on holidays in the UK. They appeared relaxed and intimate in the photographs. The Sponsor had hundreds of photographs on her phone going back to August 2016 when she first bought the phone: they appeared to be a couple in the photographs not just friends or people who shared accommodation, they are people sharing a life. After viewing the photographs, I am satisfied that theirs is a genuine relationship.

Conclusion

31 I find that the Appellant has discharged the burden of proof on him to show that the terms regulation 2 of the Regulations are met.

32 No order for anonymity is made.

DECISION

33 The appeal in respect of the EEA Regulations is allowed.

Signed

Date **1 February 2018**

Judge D Birrell
Judge of the First-tier Tribunal

TO THE RESPONDENT **FEE AWARD**

As I have allowed the appeal and because a fee has been paid or is payable, I have considered making a fee award and have decided to make a fee award of the whole fee as I found that the marriage interview did not justify the refusal of the application.

Signed

Debra Birrell
Judge of the First-tier Tribunal

Dated **31.1.2018**