



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: IA/06179/2013

**THE IMMIGRATION ACTS**

Heard in Bradford  
On 30<sup>th</sup> August 2013

Determination Promulgated  
On 13<sup>th</sup> September 2013

Before

UPPER TRIBUNAL JUDGE D E TAYLOR

Between

NAVID AHMAD

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Mr Saleem of RKS Solicitors  
For the Respondent: Mrs R Pettersen, Home Office Presenting Officer

**DETERMINATION AND REASONS**

1. This is the Appellant's appeal against the decision of Judge Atkinson made following a hearing at Bradford on 20<sup>th</sup> June 2013.

## **Background**

2. The Appellant is a citizen of Pakistan, born on 16<sup>th</sup> March 1986. He applied for a residence card as the extended family member of Agata Wloch on 4<sup>th</sup> September 2012 on the grounds that he was in a durable relationship with her. The application was refused on 6<sup>th</sup> February 2013.
3. The Respondent was not satisfied that the couple were living together as claimed and the judge agreed with her. The Appellant first arrived in the UK with a visa which expired on 15<sup>th</sup> September 2011 and remained in the UK following expiry of his leave. He first had contact with Miss Wloch in January 2011 via a Polish website and met her on 9<sup>th</sup> April 2012 at Manchester Airport. Six weeks later the couple underwent an Islamic marriage ceremony on 20<sup>th</sup> May 2012.
4. The judge said that the circumstantial evidence tended to show that the arrangements more closely resembled that of a marriage of convenience rather than a genuine relationship. The parties provided virtually no detail about how their relationship could have developed so quickly given the cultural differences and the initial lack of physical proximity. The Appellant is a Pakistani national with a Muslim background whose first language is Urdu and Miss Wloch is a Catholic woman speaking Polish and resident in Poland.
5. The judge also considered that it was unusual that the Islamic religious ceremony of marriage took place in Dewsbury rather than at the Appellant's local mosque in Wakefield. Moreover there was inconsistent evidence about whether Miss Wolch's parents knew of the marriage and significant inconsistencies as to what their view of the marriage was.
6. He accepted that there was documentation showing that the Appellant and Miss Wloch lived the same accommodation for a period of ten months but he attached limited weight to that evidence. There was little support for the Appellant from other witnesses. Taken as a whole he was not satisfied that the Appellant had shown that he was in a durable relationship with an EEA national.

## **The Grounds of Application**

7. The Appellant sought permission to appeal on the grounds that the judge had erred in making assumptions about the marriage ceremony, and repeated the Appellant's evidence that he was not aware that his partner's parents knew of it, had not adequately considered the evidence before him and did not mention the raid carried out by UKBA on the Appellant's residence, which established that the couple were living together.
8. Permission to appeal was granted by Judge Landes on 9<sup>th</sup> July 2013. Judge Landes said that, apart from the judge's treatment of the circumstances of the marriage, the rest of the grounds appeared to be a disagreement with the decision, but he gave permission for all grounds to be argued.

9. On 17<sup>th</sup> Jul 2013 the Respondent served a reply defending the determination.

### **Submissions**

10. Mr Saleem relied on his grounds and submitted, in relation to the marriage, that the judge had not given adequate reasons for finding that the circumstances were unusual. He said that the judge had not taken into account the evidence of the UKBA raid. He had documentary evidence that the couple were living together at the date of the hearing and in fact were continuing to live together. He had placed undue weight on the Respondent's submissions.
11. Mrs Pettersen submitted that the grounds amounted to a disagreement with the decision. The judge had given a number of reasons for finding that the couple were not in a durable relationship, including the speed of its progress, the cultural differences and inconsistent evidence on an important matter.
12. She said the UKBA visit was not an unannounced marriage visit but a check on the Appellant's address as an overstayer. UKBA wanted to see his travel documents and no report had been produced.
13. Even on his own evidence the Appellant had only cohabited with Miss Wloch for nine months as at the date of decision and, whilst she accepted that it would have been open to the judge to find that the relationship was durable even if it had lasted for less than two years, the caseworker instructions were that there should be cohabitation for a period of two years in order for a residence card to be issued on the grounds of a durable relationship.

### **Findings and Conclusions**

14. There is no error in this determination. The judge's findings were open to him for the reasons which he gave.
15. The judge was entitled to consider that the speed with which the Appellant, who was an overstayer, entered into the relationship, undermined his contention that he was in a durable relationship with her. He clearly did not believe the Appellant when he said that he had looked at a Polish website by chance, and would have been aware that marriage to an EEA national could have resolved his immigration difficulties. The couple come from very different cultural backgrounds and met for the first time only six weeks before the marriage. It was open to the judge to conclude that the relationship did not develop as claimed by the Appellant and Miss Wloch. It is not even clear if they have any common language.
16. With respect to the question of where the Islamic religious ceremony took place, the judge did not assume that the ceremony had to take place at the Appellant's local mosque. He was entitled to say that the fact that the ceremony took place elsewhere required explanation. The Appellant after all had the opportunity to address the issue in his statement but did not do so. Had this been the sole or even the principle reason for the judge's conclusions, it may well be that the submission that the

Appellant was not asked a specific question in oral evidence may have had more merit. However the judge gave a number of other wholly sustainable reasons for his decision.

17. With respect to the parental involvement, it was clearly open to the judge to find that the inconsistent evidence between the parties undermined the claim. It is most unlikely, if the couple were closely emotionally involved with each other, that the attitude of Ms Wloch's parents to the marriage would be a matter of great importance to them. The fact that the Appellant said that Miss Wolch's parents did not know that they had married whereas she said that they accepted marriage is highly significant.
18. The judge took into account the documentary evidence, which was supportive of the Appellant's claim that the couple lived under the same roof, but was entitled to find that it was outweighed by the other evidence before him. With respect to the visit by UKBA, there was no report forming a part of the Respondent's evidence. It seems that this was not an unannounced check, but made in order for the Respondent to see the Appellant's travel documents.
19. On the evidence before the judge the couple had produced documents to show that they were living under the same roof for a period of nine months by the date of decision. The Home Office test that there should be cohabitation of two years is by reference to the unmarried partner's rule. To require two years is not necessarily consistent with the examination of the personal circumstances of extended family members required by the Directive. In this case however the point is immaterial because the Respondent did not refused the application on the basis that the couple had been living together for less than two years.

### **Decision**

20. The original judge did not err in law and the decision stands. The Appellant's appeal is dismissed.

Signed

Date

Upper Tribunal Judge Taylor