IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2021-001447

First-tier Tribunal No: EA/01183/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 27 July 2023

Before

UPPER TRIBUNAL JUDGE PERKINS

Between

Qasir Mahmood
(no anonymity order made)

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:
For the Appellant: Ms A Jones, Counsel instructed by Connaught Law Solicitors
For the Respondent: Mr E Tufan, Senior Home Office Presenting Officer

Heard at Field House on 6 March 2023

DECISION AND REASONS

1. This is an appeal by a citizen of Pakistan against a decision of the First-tier Tribunal dismissing the appellant's appeal against a decision of the respondent on 19 January 2021 refusing him leave to remain as the former husband of an EEA national.

2. The appeal was dismissed by the First-tier Tribunal but that decision was set aside because the First-tier Tribunal had erred in law. The main reason was that the judge had not shown that it was for the Respondent to show that the marriage was one of convenience.

3. The appellant had been involved in three earlier appeals against similar decisions.

4. The appeal against the first decision was heard by First-tier Tribunal Judge Osborne, whose decision was promulgated in (I think) October 2015. The appellant was not represented at that hearing. The appellant did not attend before Judge Osborne who made the decision on the papers.

5. The next appeal was before First-tier Tribunal Judge Geraint Jones Q.C. whose decision was promulgated on 31 October 2018. The appellant was not represented at that hearing and the appellant did not appear. The judge refused an adjournment based on an unsubstantiated claim that the appellant's wife had had a miscarriage and the appellant and his wife were too distressed to attend. Judge Jones then made the decision to dismiss the appeal for essentially the same reasons given by Judge Osborne. There is better evidence before me and I find that the appellant's wife had miscarried.

6. Neither of these Decisions are of much if any relevance to me. The decisions were based in limited evidence and no representation.

7. Having set aside the (latest) First-tier Tribunal decision attempts to arrange a continuance hearing were frustrated by events.

8. I apologise for the delay in promulgating this Decision and Reasons. It is based very closely on a draft that I received from the typist on 14 March 2023 but which I overlooked until prompted by an enquiry.

9. It is now clear that the appellant, who is a citizen of Pakistan, was lawfully married to an EEA national at the Croydon Mosque & Islamic Centre on 20 July 2014 and divorced on 6 September 2019. Unless the respondent can show, on the balance of probabilities, that the marriage was one of convenience the appeal should be allowed.

10. I begin by considering the Home Office refusal letter dated 19 January 2021.

11. I note that the appellant married an EEA national, who I identify simply as "IM", on 25 July 2014. Very soon after making that application the appellant, by solicitors, applied for a residence card to confirm his right to reside in the United Kingdom.

12. The appellant and his wife were interviewed on 4 November 2014 but the answers to interview questions were found to be discrepant. Some of the discrepancies were illustrated.

13. The appellant said that he met the woman who became his wife in April or May 2013 and they married on 25 July 2014.

14. However, they gave different answers about the home in which they were living and the respondent found it "clear" that they were not living together.

15. The appellant said that their bedroom was on the ground floor and had a light red carpet but his wife said that it was on the first floor and had a purple and white carpet. The appellant said they had a silver microwave but his wife said they did not own a microwave. The appellant said the kitchen floor was wooden and light grey but the appellant's wife said that the kitchen floor had sand coloured tiles.

16. It was the appellant's case that his wife had converted to Islam on the day they married but she was not able to answer many questions about Islam. She could not correctly state the five pillars of Islam and did not know the first word of the Quran which is widely translated as "Read". She could not name any prophets other than Mohammed.

17. The appellant's wife took an Islamic name but spelt it in a way that the interviewing officers thought to be wrong and she could not pronounce it.

18. The appellant and his wife could not agree about attendances at a mosque. She said she had been twice, once when they had married and once in October 2014 for Eid but his wife said she had only ever been on the day of the marriage.

19. The appellant said he and his wife shared a blue and white and red prayer mat but the appellant's wife said they had their own prayer mats and that hers is blue and gold and his is black and gold.

20. They could not agree on when they celebrated the sponsor's most recent birthday. He said he had taken her to Glasgow and spent a night in the first floor room of a Travelodge and they had breakfast at a café ten minutes from the hotel but his wife said they had spent the night at the second floor hotel room at a Travelodge in Wimbledon, London and they had breakfast in the hotel.

21. The appellant produced supporting evidence. There was a tenancy agreement dated 1 January 2018 showing his wife as a tenant, there was a council tax demand in joint names and there were various photographs and letters as well as the marriage certificate.

22. The respondent did not find these sufficiently persuasive to undue the damage that was thought to be done by inconsistent answers at interview.

23. The application was refused.

24. I have considered the interview records for myself.

25. The interview record is in tabular form. The applicant said his wife had no family in the United Kingdom whereas she said she had three cousins. However, when pressed, the appellant remembered a cousin who lived in London who he had met on many occasions. He gave similar answers to his wife's concerning his wife leaving the United Kingdom for a short time and about when they first met. The appellant said that they met in April 2013. His wife said in May 2013. They were asked about their first "date". They agreed that that was on 8 July 2013 and they agreed that the appellant arrived with flowers. There is a slight disagreement about the name of the restaurant. It was described variously as "Princes of India" and "Prince of India". They kissed after their "date". They agreed that they shopped at Primark but the appellant said that after Primark they went to eat at KFC and his wife said they went to eat at a restaurant that served Asian food. They agreed that after they married, the appellant moved to his wife's home. He said that he brought nothing but his clothes but his wife said he brought his clothes and a new mattress.

26. The interview record records different answers about attending at a mosque and the details of the prayer mats, although I do note that the appellant said that the prayer mat was kept in a cupboard on a top shelf in their bedroom and the appellant's wife said that they were kept in their wardrobe on a top shelf. They agreed that the front door to their home appeared to be made of wood. The appellant described it as light brown and the appellant's wife as dark brown. They did not agree about whether or not they owned a microwave. However they do seem to agree that they owned a white kettle.

27. The appellant supported the appeal with a witness statement. He relied on the statement that he had signed on 3 August 2021.

28. In his statement the appellant said that he first met his wife in April 2013 and, basically, found her very attractive. He described her in tender terms and resolved to marry her and they agreed to marry.

29. He dealt with inconsistencies in the interview answers. He said that it is not inconsistent to describe the bedroom as being on the ground floor or first floor. The phrases "first floor" and "ground floor" can mean the same depending on the person's use of language. In traditional English use the ground floor is not the same as the first floor but for some people they are synonymous.

30. Their bedroom had a light red carpet; his wife was describing a rug that was on the carpet.

31. The different answers about the microwave turned on the question being asked about whether they owned a microwave. There was a microwave and it was described correctly but it was owned by the landlord.

32. He said the description of the floor was not discrepant. He said the kitchen floor had “wooden tiles effect”.

33. He maintained that far from being inconsistent they had each given consistent but different incomplete answers.

34. His wife had not been a Muslim for very long and it was unfair to criticise her for her ignorance about the religion she had chosen to embrace. His wife did not use her Muslim name because that was not the name on her documents. The interviewing officer had spelled it wrongly.

35. The appellant said that they had been to two mosques, once on the day of the marriage and once in Eid but they were different mosques on each occasion. They did share a prayer mat and they had several prayer mats in their home. Discrepant answers emerged because it was assumed that they each had personal prayer mats.

36. The appellant denied that there was any substantial inconsistency about the birthday celebration events. He said he took his wife to Glasgow to spend the night in a first floor room at a Travelodge and had breakfast at a café ten minutes walk from the hotel. His wife said they had spent a night in the second floor hotel room at a Travelodge in Wimbledon and had breakfast in the hotel. He said they had in fact celebrated her birthday in both London and Glasgow. They stayed overnight in a Morden Travelodge and he surprised her with a cake in the hotel. He took her to Glasgow as a present. They were given a room on the 2nd floor but the plumbing did not work and the room was changed.

37. He then complained about being detained unfairly. He said his wife had left the United Kingdom but was trying to get back to see him. He was not very happy.

38. In July 2018 they discovered his wife miscarried and described the experience as leaving them “fully devastated”. She is now in the UK but he did not have any dealings with her. They had parted and he did not really know how to contact her.

39. There is a letter from a Mr Arshad Pervaiz. He described himself as a friend of the appellant and his ex-wife. They spent time together including home visits and eating out at restaurants together. He was able to say that he knew that the appellant and his wife lived together and he thought them to be very much in love. They had divorced and that was something he found that was sad. He supported the letter with an extract from his passport showing him to be a British citizen.

40. There is a letter from a Mr Farrukh Shahzeb. He knew the appellant because they had played cricket together. They had socialised together and he believed the appellant and his wife to have been married happily. He too supported his letter with passport.

41. There is a letter from Rehan Ejaz. He believed the appellant and his wife to be in a genuine relationship and he found it unfortunate that the marriage did not work out.

42. There are photographs showing the appellant and his wife together. As Ms Jones pointed out they are dressed differently. This tended to show socialising on different occasions over a period of time which tended to support the claim that they were in fact in a genuine marriage.

43. There were letters tending to show that the appellant used the matrimonial address as his main address. The bank statements were sent to the same address and there are bank statements in the name of the wife also sent to the same address. There are letters from HMRC dated on different occasions in 2018 addressed to both the appellant and his wife at their reported matrimonial home. In the tenancy agreement dated 1 January 2018, both the appellant and his purported wife are named and this tends to confirm that the appellant's wife was a tenant of the matrimonial home.

44. There is a letter from the general medical practitioner to the appellant's wife in November 2017 about her not taking advantage of an offer of a test. There is a payslip for his wife and a bank statement from Halifax Bank to the appellant's wife. The letter and telephone bill in 2017 are sent to the address in the appellant's name.

45. There is a letter for a bank dated September 2016 confirming that the appellant's wife has been offered a job but her address then was in Mitchem and not the purported matrimonial home. The address began with the number 13.

46. It is the Appellant's case that he lived with his wife at a different address in South London beginning with the number 59.

47. There are several items of correspondence from health service practitioners in about June 2018 that were sent to the Appellant's wife at the shared "59" address that refer to her pregnancy.

48. There is a letter to the appellant in November 2014 offering him a Christmas job that was sent to the same "number 13" address that was used by his wife.

49. There is also correspondence confirming that the appellant was living at the purported matrimonial home and suffering with mental health problems.

50. There is a supplementary statements saying that his wife's miscarriage was in September 2018 not July 2018.

51. There is a bundle of evidence provided that I wish to consider in more detail.

52. There is a letter dated 4 June 2020 addressed to the appellant at the "59" address concerning his bank account with the TSB. It is dated 4 June 2020. There is also a letter in the TSB concerning a cancelled direct debit dated 25 June 2018, again sent to the 59 address. There is a letter dated 22 June 2018 concerning cancelling a direct debit, again sent to the appellant at the 59 address. There is an account interest summary for the tax year ending 5 April 2018 dated 29 May 2018 and sent to the 59 address to the appellant. There is an interest summary for the tax year ending 5 May 2018, again sent to the 59 address to the appellant. The document appears to relate to a credit card problem sent to the appellant at 59 dated 9 April 2018. There is a statement from Lloyds Bank addressed to the appellant's wife at 59 dated 26 June 2018. There is an account summary for the period 23 March 2018 to 26 June 2020 again addressed to the appellant's wife at 59. The statement for the appellant's

wife at Lloyds Bank at the 59 address for the period 20 December 2017 to 22 March 2018. The letter from the HM Revenue & Customs concerning the national minimum wage dated 4 May 2018 addressed to the appellant's wife at the 59 address. There is a letter dated 22 January 2018 from HM Revenue & Customs in dealing with the appellant's wife employment history and dated 22 January 2018 and there is a short shorthold tenancy agreement in the name of the appellant's wife referring to the 59 address dated 1 January 2018. The bundle then shows more TSB bank statements in the appellant's name at the 59 address dated 2 February 2018 and covering the period December 2017 to 2 February 2018 (I assume). There is a letter from HM Revenue & Customs for the appellant's wife at the 59 address dated February 2018 dealing with her tax affairs. There is a tenancy agreement relating to the 59 address in the name of the appellant and his wife dated 1 January 2017. There is a letter to the appellant at the 59 address issued on 16 June 2017 from the TSB. There is a medical appointment, a letter inviting the appellant's wife for a test addressed to the 59 address dated 29 November 2017 and then a payslip in the name of the appellant's wife at the 59 address dated September 2017. There is a Halifax bank statement in the name of the appellant's wife at the 59 address over stamped 28 September 2017 by the Halifax Bank. The letter concerning the appellant's wife's employment dated 23 June 2017 but that does not indicate her address. There is a letter inviting the appellant's wife to a screening test from NHS England dated 19 April 2017 sent to the 59 address. There is a letter dated 4 March 2017 to the appellant's wife at the 59 address and then the name of the appellant at the 59 address from BT concerning a new account that is dated 2 March 2017. There is a letter from M&S Bank to the appellant at the 59 address dated 10 January 2017 and then from Tesco Bank to the appellant at the 59 address on 4 January 2017. There is a letter from a credit card firm "Cashplus" to the appellant at the 59 address dated 3 January 2017. A similar letter from the Cooperative Bank at the 59 address dated 2 January 2017. There is a letter to the appellant's wife at number 13 address dated 6 June 2016 and then a council tax demand to the appellant and his wife at that same number 13 address dated 12 September 2016. There is a banking letter concerning online banking from the Halifax to the appellant's wife at the number 13 address dated 15 September 2016 and a letter from the Halifax to the number 13 address but I cannot see a date on that document.

53. There is a letter to the appellant at the number 13 address dated 10 November 2014 and a payslip for the appellant's wife at the number 13 address dated 5 September 2014.

54. There is then a contract of employment concerning the appellant's wife at the number 13 address but I cannot discern the date.

55. There is counterpart driving licence in the name of the appellant at the number 13 address.

56. Of particular interest is a letter to the appellant's wife at the number 59 address concerning Merton Health Visiting Service and describing her as an expectant mother. That is dated 29 June 2018. Similarly there is a letters sent to the number 59 address sent to the appellant's wife dated 26 June 2018 concerning appointments with a midwife's team and then a letter dated 5 June 2018 inviting the appellant's wife to book an appointment to have her baby at a particular hospital. That letter is sent to the 59 address in June 2018. The letter dated 5 June 2018 to the appellant's wife at the 59 address for the twelve week ultrasound scan. There is associated with that a preregistration document

showing the appellant to live at the 59 address and giving her marital status as "married/civil partner".

57. There is further correspondence concerning the planned birth of the baby dated 5 June 2018 sent to the appellant's wife at the 59 address. There is a letter from the National Health Service concerning the appellant dated 10 June 2020. It is the correspondence between medical practitioners, but it identifies the appellant as someone living at the 59 address. A similar letter between medical practitioners concerning the appellant dated 30 August 2019 shows him living at the 59 address. He was offered an appointment on 28 June 2019 and that letter was sent to the 59 address. I find the letter referring to a clinical appointment on 22 May 2019 concerning the appellant said to live at the 59 address particularly interesting because it indicates what the appellant said when he was appointed when he attended an appointment. This strongly suggests he was receiving correspondence when dealing with at that address.

58. There is further correspondence dated 3 May 2019 to the appellant to the 59 address and a letter dated 25 April 2019 from the South West London and St Georges NHS Trust to another medical practitioner again identifying the appellant and showing he lived at the 59 address. There was also a letter dated 9 April 2019 from the same health service trust showing the appellant to be living at the 59 address. The letter dated 21 March 2019 again between medical practitioners showing the appellant to be living at the 59 address, letter dated 19 December 2018 from the same National Health Service Trust to a medical centre showing the appellant to be living at the 59 address but saying that he was in frequent contact with his wife by the telephone. That letter refers to "this followed two significant life events (namely the reported miscarriage and subsequent breakdown of his marriage"). This letter is at page 166 of the bundle.

59. I have reviewed all of the evidence before me and reflected on the submissions made briefly by Mr Tufan and in more detail, but by no means excessively by Ms Jones.

60. It is very difficult to make a confident analysis of this evidence. The medical evidence shows the appellant to have presented to medical practitioners talking about things that simply could not be right in particular his relationship with a child that does not exist. The appellant's case is handicapped by there being no input at all from his wife.

61. However, it is for the Secretary of State to show that the marriage was one of convenience. Certain things are clear. There was a marriage and later there was a divorce. There is also evidence that I find highly persuasive of cohabitation. The letters from revenue and medical practitioners and banks appear to be genuine documents. It is possible that the appellant has been involved in a sophisticated and elaborate ruse to give the impression of cohabitation when that is not what was happening but the letters that are revealing are from a bank and HM Revenue & Custom and concerning medical matters. It seems likely to me that the appellant and his wife would be giving correct addresses for such things, which puts them living together.

62. Unlike the judges who looked at this previously I had the advantage of hearing directly from the appellant and hearing his hopes for the marriage and expectations that they would be happy and Mr Tufan, for whatever reason not testing this in cross-examination with any energy.

63. Two points taken against the appellant in the main to my mind are not particularly impressive. Clearly the appellant's wife had little interest in the new religion that she had intended to embrace but that might mean she just does not take religious matters very seriously. It does not mean that there was not a ceremony and does not tell me very much of anything about the nature of her marriage, except that having married in a mosque she wanted to identify as Muslim.

64. The appellant's wife was clearly pregnant. I do not see how the evidence of offered appointments could have been sent to that address by any remotely sensible or believable route unless in fact the appellant's wife was making arrangements to be cared for during her pregnancy and eventually to have a baby.

65. When people divorce they sometimes remain on agreeable terms. Occasionally they become very friendly and sometimes they fall out of each other's lives. The appellant says that he and his former wife parted and are no longer in each other's lives and he has little idea how to contact her. There is no reason for me to disbelieve that. It is not an inherently unbelievable claim. That of course would explain why there is no supporting evidence from her. This does not directly help the appellant but it does mean the absence of avoiding evidence is not something that adds very much to the Secretary of State's armoury.

66. I am completely unimpressed with the alleged failure to know which floor they slept on but even if they were not in an intimate or married relationship they would tend to know where they slept and the appellant's suggestion that his wife used the words "first floor" to describe what he would call the "ground floor" seems to me very persuasive.

67. The failings in the interview are not impressive. Of course it would help the appellant's case if he and his wife had given consistent accounts at interview about party arrangements and prayer mats and so on but these inconsistencies, taken as a whole, do not unsettle me very much. They might raise a doubt but that is all they do.

68. Looked at objectively, the evidence suggest to me very strongly that the appellant and his wife were living together at the same house and that his wife became pregnant while they were living together. I find it significant that he was telling the medical practitioners that he was upset because of his wife having a miscarriage and because of the failure of his marriage. These things of course could have been said entirely cynically to produce favourable supporting evidence from the medical practitioners but it seems to me inherently much more likely that they were said because they were true.

69. It is possible the appellant's wife was pregnant by someone other than her husband and he did not know or rather that he did know and did not care and it is possible that he was seizing on the pregnancy and miscarriage as a convenient explanation for the failure of a marriage that was not genuine but his case has to be proved by the Secretary of State on the balance of probabilities and the alternative explanations do not seem to be in the least bit probable.

70. I also remind myself that a marriage entered into for his marriage of convenience can become a genuine marriage for companionship and support after the event and that is not sufficient to satisfy the Rules but facts that would support such a conclusion would be rather unusual.

71. I find that the appellant and his alleged wife did marry, they did divorce, they did live together for some time in the same accommodation and they were identified as a couple in the community and that the appellant was saddened when his wife's pregnancy came to an end. Rather than finding that the Secretary of State has proved the case I find it is probable that this was not a marriage of convenience but a marriage as a result of courtship of a year and a growing friendship.

72. The Secretary of State has failed to discharge the burden. It follows therefore that I allow the appellant's appeal.

Jonathan Perkins

Judge of the Upper Tribunal
Immigration and Asylum Chamber

26 July 2023