Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/01755/2014

THE IMMIGRATION ACTS

Heard at Field House	**Determination Promulgated**
On 20 August 2014	**On 05 September 2014**

Before

DEPUTY UPPER TRIBUNAL JUDGE DAVID TAYLOR

Between

QAISER BILLA
(ANONYMITY DIRECTON NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Maqsood, Legal Representative
For the Respondent: Mr S Kandola, Home Office Presenting Officer

DETERMINATION AND REASONS

1. This an appeal by the Secretary of State but for convenience I have retained the designations used in the First-tier Tribunal. The Secretary of State is thus referred to, in this determination, as the Respondent.

2. The appellant Mr Qaiser Billa is a 28 year old citizen of Pakistan born on 4 January 1986. In May 2013 he applied to the Secretary of State for a residence card under the Immigration (EEA) Regulations 2006 on the basis that he is the husband of an EEA national exercising treaty rights in the

UK. His wife is stated to be Aleksandra Pawlowska, a Polish national. They were married at Reading Register Office on 7 May 2013.

3. On 29 November 2013 the application was refused. The reasons for refusal letter of that date maintained that the marriage was one of convenience which is excluded by Regulation 2 of the 2006 Regulations. A marriage of convenience has been defined as "a marriage contracted for the sole or decisive purpose of gaining admission to the host state": **Papjorgji [2012] UKUT 00038** at [30]. The reasons for refusal letter set out lengthy and detailed reasons for believing this to be a marriage of convenience based on the inconsistency of the replies given by the appellant and his wife at their respective interviews. The respondent identified thirteen significant discrepancies as set out in detail in the reasons for refusal letter.

4. The appellant appealed to the First-tier Tribunal. The appeal was heard by First-tier Tribunal Judge Onoufriou whose determination was promulgated on 13 May 2014. The judge heard oral evidence from both the appellant and Ms Pawlowska. At [21] and [22] the judge identified further discrepancies in the oral evidence and he concluded "that taking into account the speed of the marriage and the fact that the appellant's application was just over a month before his student visa was about to expire, that on the facts this is a marriage of convenience".

5. Despite that finding the judge allowed the appeal as not being in accordance with the law. He did so by reference to the case of **Papjorgji**. At [20] he referred to paragraph 19 of **Papjorgji** which stated that "there must be reason to suspect a marriage of convenience before the application can be suspended pending further investigation". He held that it was for the respondent to show reasonable cause to suspect the marriage as one of convenience before pursuing further investigation.

6. The respondent sought permission to appeal. Permission was granted on 20 June 2014 by First-tier Tribunal Judge Lever on the basis that it was arguable that the judge had misapplied the application of **Papjorgji**.

7. On the issue of error of law I heard submissions by both representatives. Mr Kandola, for the Secretary of State, submitted that the judge had found this to be a marriage of convenience and that there had been no cross appeal on that finding by the appellant. The case of **Papjorgji** had been misapplied by the judge. In any event, in that case, it was found that the marriage had not been one of convenience because the parties had been together for fourteen years and had had two children. In the present case, the appellant and his sponsor had been interviewed after the application was submitted and before a decision was made to refuse the application and that it was correct and reasonable for the Secretary of State to have followed that procedure.

8. For the appellant, Mr Maqsood submitted that the judge made no error of law and that he was correct to allow the appeal on the basis of **Papjorgji**. Prior to the interview, the Secretary of State could have had no grounds for suspicion as to whether or not this was a marriage of convenience.

9. I must first consider whether there has been an error of law in the determination of the First-tier Tribunal. I am satisfied that there was such an error of law. I have carefully reviewed the full determination in **Papjorgji**. In his conclusions at [39], Blake J, then President of the Tribunal, said this:

> "In summary, our understanding is that, where the issue is raised in an appeal, the question for the judge will therefore be 'in the light of the totality of the information before me, including the assessment of the claimant's answers and any information provided, am I satisfied that it is more probable than not this is a marriage of convenience?'."

10. The First-tier Tribunal Judge appears to have read [18]-[20] of **Papjorgji** as meaning that the Secretary of State is precluded from investigating a potential marriage of convenience unless there are clear suspicions that the matter should be investigated. That cannot possibly be right. Where the Secretary of State receives, as she did in this case, an application based on marriage it cannot be unreasonable, particularly where the marriage predated the application by only a few days (as was the case here) to request the parties to be interviewed prior to a decision being made. That is what the Secretary of State did in this case and it was entirely based on the parties' replies to questions at the interviews that the application was refused.

11. The judge therefore made a material error of law in his interpretation of the effect of **Papjorgji** and his decision must therefore be set aside.

12. There is, however, no reason for me, in remaking the decision, not to accept the clear finding of the First-tier Tribunal Judge (after hearing oral evidence) that this was, as claimed by the respondent, a marriage of convenience. Those findings are retained and accordingly the appeal of the appellant Mr Billa, must be dismissed.

Decision

The determination of the First-tier Tribunal contained an error of law and is set aside (save as to the findings of fact at paragraphs 21 and 22 of the determination). The fee award is similarly set aside.

I remake the decision by dismissing the appeal of the appellant Mr Qaiser Billa.

Deputy Upper Tribunal Judge David Taylor
5 September 2014