



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

Appeal Number: IA/41584/2013

THE IMMIGRATION ACTS

Heard at Field House

On 21 July 2014

Determination

Promulgated

On 05 August 2014

Before

UPPER TRIBUNAL JUDGE PINKERTON

Between

**MR MANISH GULATI
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Q S Anisuddin

For the Respondent: Mr I Jarvis

DETERMINATION AND REASONS

1. The appellant is a national of India who was born on 27 February 1984. He applied on 1 May 2013 for a residence card as confirmation of a right to reside in the United Kingdom, but that application was refused. He

appealed the decision and the appeal was heard before a First-tier Tribunal Judge who dismissed it. The judge found that he was satisfied that the acknowledged marriage between the appellant and his wife is a marriage of convenience.

2. The appellant sought permission to appeal that decision and permission was granted. The judge doing so found that the First-tier Judge made a clear finding as to the credibility of the appellant's wife but did not do so in relation to the appellant himself. In the absence of a sufficient and balanced analysis of the factors to be weighed in reaching a conclusion as to the appellant's credibility, an arguable error of law was disclosed in relation to the conclusion that the marriage was one of convenience.
3. In a Rule 24 response the respondent submitted that the grounds seeking permission to appeal were nothing more than a disagreement with the findings of the judge.

The Hearing before me.

4. Before me Mr Anisuddin on behalf of the appellant argued that the appeal ought to have been allowed given that the judge accepted that there were very few discrepancies between the appellant and his wife at interview and the judge's finding that such discrepancies were in any event not material. The judge found that the appellant and his wife are married and that they "stay together". He also found the wife to be a credible witness but made no finding of credibility in respect of the appellant himself other than to say that he had grave concerns in respect of him.
5. Mr Anisuddin further argued on behalf of the appellant that the authority of **Papajorgji (EEA spouse - marriage of convenience) Greece [2012] UKUT 00038 (IAC)** showed that cohabitation as man and wife is inconsistent with a marriage of convenience. Having found that the couple are living together the judge erred in law to find the marriage was one of convenience.

My Deliberations

6. The guidance of the European Communities Commission is appended to the decision of **Papajorgji** and contains a definition of a marriage of convenience. Such is said to be, for the purposes of the Directive, a marriage contracted for the sole purpose of enjoying the right of free movement and residence under the Directive that someone would not have otherwise. **Papajorgji** makes clear that there is no burden at the outset of an application on a claimant to demonstrate that a marriage to an EEA national is not one of convenience. The case of **IS (marriages of convenience) Serbia [2008] UKAIT 31** establishes only that there is an evidential burden on the claimant to address evidence justifying reasonable suspicion that the marriage is entered into for the predominant purpose of securing residence rights.

7. Paragraph 14 of **Papajorgji** sets out that there is no definition given of marriage of convenience, but that phrase has been construed in the context of the Immigration Rules as a marriage entered into without the intention of matrimony or cohabitation and for the primary purpose of securing admission to the country.
8. At paragraph 20 of **Papajorgji** in concurring with the AIT's conclusion in **IS** the Tribunal set out that there is no burden on an applicant in an EU case to prove that a marriage is not one of convenience until the respondent raises the issue by evidence. If there was such evidence it is then for the applicant to produce evidence to address the suspicions. Such an approach can be described as one of an evidential burden in the first place on the respondent which shifts to the claimant in the light of the relevant information, rather than a formal legal burden.

My Conclusions

9. The judge had the benefit of hearing evidence from the appellant and his spouse. The judge found that the appellant arrived in the United Kingdom as a family visitor. His leave was due to expire in November 2012. Although the determination refers to him having arrived on 7 July 2012 he did so probably a month earlier, because in the very next paragraph it is said that after he arrived he was due to marry a Portuguese lady in July, according to the interview record.
10. The judge noted therefore that this meant that within the first month of being in the UK the appellant intended to marry another woman which, according to the appellant, would have been a love marriage. He then met his current wife in mid September of the same year, proposed to her within a few weeks, and they began living together. They were interviewed almost immediately after that.
11. The judge found that although there were some discrepancies between their answers at interview they were not material. The judge referred also to a text message in the interview about needing to get married. The judge had not been provided with a copy of that text or the interview with the appellant where it was discussed. He said that he gave no weight to the text message as he could not assess its context, who it was from and who it was actually sent to etc. He did note, however, that the appellant and his wife gave conflicting information as to how their engagement was celebrated and when, but there were other matters about which they were in agreement. The judge acknowledged that this was a difficult case to decide and he found that the appellant and his wife "stay together". He found the appellant's spouse to be clear in her evidence, that she was a credible witness, and he accepted that evidence.
12. The judge then went on to write that although he found the appellant's spouse to be genuine, he had grave concerns in respect of the appellant himself. In context, and from what he set out afterwards, it is abundantly clear that the judge did not find the appellant to be a credible witness.

Paragraph 48 sets out those reasons. He concluded that the matters set out there all point to a marriage of convenience entered into by the appellant solely to remain in the United Kingdom. He did not believe that that was his wife's intention and beliefs, but found that she has been deceived by her husband.

13. The judge was correct to ask himself whether he was satisfied that it is more probable than not that this is a marriage of convenience in the light of the totality of the information before him, including the assessment of the appellant's answers and any information provided. For the reasons given he found that this was a marriage of convenience, albeit that it was only the appellant who entered into the marriage with that motive. The fact that the couple stay together, in context, is saying no more than that they are living under the same roof. The decision is not perverse or one that the judge was not entitled to come to on the facts as found by him.

Decision

14. For the above reasons the decision of the First-tier Judge does not disclose a material error of law or other good reason for the decision to be overturned. The decision to dismiss the appeal of the appellant therefore stands.
15. No anonymity direction has been made previously and none was sought. The circumstances do not warrant such a direction being made now.

Signed

Date

Upper Tribunal Judge Pinkerton