



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

Appeal Numbers: IA/00839/2015
IA/00842/2015

THE IMMIGRATION ACTS

**Heard at Field House
On 8 December 2015**

**Decision and Reasons
Promulgated
On 14 December 2015**

Before

UPPER TRIBUNAL JUDGE STOREY

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**MR MOUSSA MOSTEFA
MS NAOUEL TOUHAMI**

Respondent

Representation

For the appellant: Mr I Jarvis, Home Office Presenting Officer

For the respondent: Mr C Lam of Counsel instructed by David Tang & Co.

DECISION AND REASONS

1. The respondents (hereafter claimants) are husband and wife. The first claimant is a citizen of Algeria, the second a citizen of France and hence an EEA national. On 12 December 2014 the appellant (hereafter the Secretary of State for the Home Department or SSHD) refused to issue the first claimant with a residence card as confirmation of his right of residence as the spouse of an EEA national. On the same date she

refused to issue the second claimant with a registration document to confirm she is an EEA national exercising Treaty rights.

2. Their appeal against this refusal came before First tier Tribunal Judge Majid who allowed it. The grounds of challenge were firstly that the judge had erred in failing to make findings on the qualified status of the second claimant and failed to resolve discrepancies in the evidence relating to whether the couple had entered into a marriage of convenience; the second ground was that the judge had failed to provide any adequate findings of fact decisive to the outcome of the appeal.
3. There are a number of unsatisfactory features of the judge's written decision. He appears to regard the issue he had to decide as one of whether the couple had "leave" under the Immigration Acts, rather than one of whether there was compliance with the Immigration (European Economic Areas) Regulations 2006. His decision is cursory and jumps from one issue to another without clear sequencing. This is not the first time I have said similar things about this judge's decisions. That said, I am only entitled to set aside such a decision if satisfied that it is vitiated by material error(s) of law and in this particular case I am not satisfied that the respondent has made out her grounds.
4. As regards the first ground, it is important to recall that in the reasons for refusal letter the respondent was alleging, *inter alia*, that the second claimant had not established she was in genuine employment. By the time the case came before Judge Majid the claimants had submitted considerably more evidence, dealing not only with her past employment but with her new employments with AST Audio Ltd (Orbitsond) and Contrella. The SSHD did not send any response disputing any of this evidence. At the hearing there was no appearance by a Presenting Officer. In the grounds of challenge to the judge's decision it is not suggested that this further evidence is unreliable. When one turns to what the judge did, it is clear that he considered the further documentary evidence. He heard from the couple and in particular heard from the second claimant about her two new employments. He noted at [14] that the second claimant had given specific evidence about her new jobs. It is entirely clear from his determination that he was satisfied that the evidence considered as a whole established that the second claimant was exercising Treaty rights and that she was a qualified person. What I have just said overlaps with what I go on to say about the second ground, but I shall first deal with a second limb of the first ground as it was advanced, namely the contention that the judge failed to resolve discrepancies noted in the marriage interview, although this too overlaps with what I go on to say as regards the second ground.
5. Whatever the shortcomings of the judge's written decision it is clear that he properly identified all the relevant evidence and correctly understood that he had to resolve disputed matters. Although he did not address the respondent's decision letter in detail, or its identification of a number of discrepancies in the marriage interview in full, it is clear that

(i) he considered that the evidence he had from the claimants clarified some of the points of the evidence before the caseworker ([4]) and that the first claimant “gave evidence consistent with the assertions in various documents” ([7]); (ii) he gave specific consideration to the issue of discrepancies, noting for example that he accepted Mr Lam’s submissions at that hearing that all the “controversies” were minor ([10(c)]); (iii) at [14] he noted Mr Lam’s submissions as regards Q9 which was one of the specific questions referred to in the decision letter and seen as demonstrating serious discrepancy; and (iv) he noted that the oral evidence “persuaded[ed]” him of the fact that the couple had entered into a genuine marriage [17].

6. Turning then to the second ground, I consider the answer to it is inherent in what I have just said in relation to the second limb of the first ground. Whilst the judge can be criticised for giving less than complete reasons and for failing to engage in full with the respondent’s concerns, it is clear that he did resolve the disputed issues of fact that were before him and that in doing so he did give reasons. His reasons go beyond a bare statement that he believed the witnesses; he also based his findings on the consistency between the oral and documentary evidence; and on his own analysis of the alleged discrepancies in the marriage interview in light of the couple’s subsequent comments on these. He also made clear that he was persuaded by the reasoning of Mr Lam. It is true that there was one discrepancy which the couple failed to address in their subsequent statements, this related to questions about payment for rings at Q110 However, in the context of an interview of over 100 questions, I concur with Mr Lam that it would have been disproportionate of the judge, in light of his assessment of the evidence as a whole, to have considered this unexplained discrepancy to possess sufficient weight to alter his principal findings. I am also bound to say that having perused the marriage interview for myself in light of the subsequent statements and oral evidence, it would be impossible for any decision-maker to ignore the very considerable consistency of most of the couple’s evidence on matters of detail.
7. Accordingly, notwithstanding criticisms that can be levelled against his decision, the judge’s treatment of the evidence and his findings upon it were entirely within the range of reasonable responses. If the SSHD failed to respond to the further documentation or to attend at the First tier Tribunal hearing when the couple were due to give evidence or if the judge was at times cursory in his analysis, these are not matters which should be held against the claimants. The SSHD’s grounds of appeal have not been made out. As a result the judge’s decision to allow the appeal must stand. Although he described it as “the appeal” it is apparent that the legal effect of his decision was that the first claimant was entitled to issue of a residence card and the second claimant entitled to issue of a registration certificate.
8. For the above reasons:

The judge did not err in law and his decision to allow the appeals of the claimants must stand.

Signed

Date:

Judge of the Upper Tribunal