



IAC-FH-AR-V1

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

Appeal Number: IA/25811/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 11 November 2015**

**Decision & Reasons Promulgated
On 18 December 2015**

Before

**LORD TURNBULL
(SITTING AS A JUDGE OF THE UPPER TRIBUNAL)
UPPER TRIBUNAL JUDGE CANAVAN**

Between

**LUIS DANIEL JUAREZ DIAZ
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms E. Daykin, Counsel, instructed by Ozkutan & Co Solicitors

For the Respondent: Mr S. Kotas, Home Office Presenting Officer

DECISION AND REASONS

1. This is the appeal by Mr Luis Daniel Juarez Diaz who is a citizen of Mexico. He appeals against the decision of the First-tier Tribunal dated 16 March 2015 in which his appeal against the Secretary of State's refusal to grant him indefinite leave to remain in the United Kingdom was refused.

2. The Secretary of State was asked to consider giving the appellant indefinite leave to remain on the basis that he was the civil partner of Mr McCloud. In her letter of refusal the Secretary of State explained that on the facts made known to her she considered that the appellant had failed to discharge the burden of proof demonstrating that he satisfied all of the requirements of the Immigration Rules and in particular paragraph 287(a). In arriving at this view the Secretary of State relied upon discrepancies in the answers given by the appellant and his partner at their interview and concluded that they had not been living together as civil partners during the previous two years or that their relationship was currently subsisting. On that basis the Secretary of State concluded that Mr Juarez Diaz and his partner did not intend to live together permanently and refused the application.
3. Before the First-tier Tribunal the Judge dismissed the appeal. At paragraph 24 of her determination she held that the appellant had not discharged the burden of proof to establish that he had been living together with Mr McCloud in a civil partnership which was subsisting, nor that the parties intended to live permanently with each other as civil partners. She therefore concluded that the Secretary of State's decision was in accordance with the law and the applicable Immigration Rules.
4. The first ground of appeal advanced on behalf of the appellant asserted unfairness arising out of a suggestion made only in closing submissions before the First-tier Tribunal that the civil partnership entered into was in the nature of a marriage of convenience. The second ground submitted that the First-tier Tribunal Judge had approached her decision erroneously by taking account of the case of **Papajorgji (EEA spouse: marriage of convenience) [2012] UKUT 38** and, the third ground submitted that she had made an erroneous assessment of the evidence before her.
5. For the appellant Ms Daykin took us through the grounds of appeal and supplemented them in oral submission. For the respondent Mr Kotas submitted that the grounds of appeal constituted nothing more than a disagreement with legitimate findings on the evidence made by the First-tier Tribunal Judge. He submitted that there had been no error as to the standard of proof in the mind of the First-tier Tribunal Judge in the decision which she made and he submitted that the Judge took account of the whole evidence led before her. He also submitted that insofar as the Judge had taken account of the case of **Papajorgji** then any mistake in so doing was one of form rather than of substance. He submitted that the weight to be given to the evidence which was led was for the Judge who presided at the Tribunal.
6. We have given consideration to the competing submissions made. In the first place we take note that the First-tier Tribunal Judge herself points out at paragraph 18 of her determination that the case of **Papajorgji** may not be directly in point. We have, at the very least, reservations as to the relevance of the case of **Papajorgji**, particularly outside its own parameters. Even if there is some value in the guidance given in that case

to a situation such as was before the First-tier Tribunal Judge, we have concerns about the way in which the Judge appeared to apply the case. When looking to what the First-tier Tribunal Judge said in paragraph 24 of her decision we consider that she has applied the case in a rather confused manner. We observe, for example, that there is no finding as to whether or not the Secretary of State had discharged the burden of raising a suspicion of a marriage of convenience.

7. Looking to the manner in which the First-tier Tribunal Judge approached the assessment of the evidence we consider that there is force in the submission that she has not taken account of, or given any weight to, certain aspects of the evidence which were in the appellant's favour. We note she records the submission made to the effect that only 17 questions out of 320 asked at the interview of the appellant and Mr McCloud appear to disclose any apparent differences. However, there is no analysis in the First-tier Tribunal Judge's determination as to what she made of the remaining 303 questions which apparently did not disclose discrepancies.
8. We also consider that it was wrong of the First-tier Tribunal Judge to rely upon her own view of the photographs which were tendered on behalf of the appellant in support of the suggestion that he was party to a subsisting relationship. The judge concluded that the photographs displayed nothing more than friendship. In explaining that conclusion she expressed herself this way:

"In particular, I note that there is no suggestion that any of these photographs were taken at the civil ceremony".

We think it was wrong of the judge to come to that conclusion in the absence of any discussion of the photographs in evidence and in particular in absence of any such suggestion being made, particularly when it transpires that the conclusion may be incorrect.

9. Lastly, we also see some support for the criticism levelled today at the First-tier Tribunal Judge's approach to the standard of proof. We note for example what was said in paragraph 23 of her determination concerning the absence of the appellant's name on certain documents and the explanation tendered for that by him, which the Judge described as not finding convincing. We would not place terribly much weight on that point alone, it may be that the Judge has simply expressed herself inelegantly there. In combination though, we are satisfied that the First-tier Tribunal Judge's decision discloses an error of law and shall set the decision aside.

Notice of Decision

The decision of the First-tier Tribunal is set aside

The case is remitted to the First-tier Tribunal to remake the decision

No anonymity direction is made

Signed

Date

Lord Turnbull
Sitting as a Judge of the Upper Tribunal