IAC-FH-AR-V1

Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: IA/34593/2014
IA/40344/2014

THE IMMIGRATION ACTS

Heard at Field House
On 25 September 2015

Decision & Reasons Promulgated
On 15 October 2015

Before

UPPER TRIBUNAL JUDGE FINCH

Between

AYESHA MUKHTAR
MILVYDAS JASTROMSKIS
(ANONYMITY DIRECTIONS NOT MADE)

APPELLANTS

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

RESPONDENT

Representation:
For the Appellant: Mr. J. Reynolds of Counsel, Buckingham Legal Associates
For the Respondent: Mr. T. Melvin, Home Office Presenting Officer

DECISION AND REASONS

1. The First Appellant, who was born on 10 February 1987, is a national of Pakistan. She arrived in the United Kingdom as a student in 2012. On 25 January 2013 she met the Second Appellant on a train. He had been born in Lithuania on 28 October 1989. They married at Camden Registry Office on 3 March 2014. She then applied for a

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residence card on 27 March 2014. The Respondent arranged for a marriage interview to be conducted in Liverpool on 27 August 2014. At that interview the Second Appellant did not request an interpreter. He later said that he could not understand his interviewer because of his Liverpudlian accent. I accept that it is clear from the interview record that the Second Appellant asked for clarification about what he was being asked on a substantial number of occasions.

2. The First Appellant was refused a residence card on that same day on the basis that her marriage was one of convenience. It was also asserted that she had not provided any audited accounts or confirmation of payment of taxes for her husband, who was said to be self-employed. In addition, it was said that he could not answer a number of questions about his alleged self-employment. She was then served with notice of removal under Section 10 of the Immigration and Asylum Act 1999, as an overstayer.

3. On the same day, the Second Appellant was served with notice of removal under Section 10 of the Immigration and Asylum Act 1999, as a person whose removal was justified on the grounds of an abuse of EEA rights in accordance with regulation 21B(2) of the Immigration (European Economic Area) Regulations 2006.

4. The First Appellant appealed on 4 September 2014. In her grounds of appeal she asserted that she should not have been served with notice of removal as she still had an outstanding application for a residence card as the spouse of an EEA national. She also submitted that there were only slight discrepancies between the account given by herself and her husband during their marriage interviews.

5. The Second Appellant appealed on 9 October 2014. He asserted that his notice of removal was defective as no reasons had been given for the decision to remove him. He also submitted that no reason had been given for inviting him and his wife to a marriage interview and that they had not been provided with copies of the marriage interviews. In addition, he asserted that the initial burden lay on the Respondent to establish that theirs was a marriage of convenience.

6. Their appeals came before First-tier Tribunal Judge Jerromes, who dismissed their appeals in a decision and reasons promulgated on 10 February 2015. She found that the Appellants had lived at the same address and continued to do so but also found that this was a shared house and that there was no evidence of any shared private or social life. In addition, she found that the Second Appellant had only been self-employed for one month. She also found that the Appellants had entered into a marriage of convenience.

7. First-tier Tribunal Judge Nicholson granted them permission to appeal to the Upper Tribunal on 5 May 2015. He found that it was arguable that in the absence of a finding by the First-tier Tribunal Judge that the record of the interviews was reliable, she had erred in placing weight on it.

8. At the error of law hearing counsel for the Appellants submitted that the record of the interviews should not be relied upon because there were discrepancies between its content and the content of the refusal letter and some of the questions appeared to

be missing. The Home Office Presenting Officer relied on the fact that there were numerous discrepancies in the marriage interviews and that the First-tier Tribunal Judge had also had the benefit of hearing oral evidence.

9. The Second Appellant asserted that she was asked a large number of questions in her part of the marriage interview but the transcript only indicates that questions 678 to 853 were addressed to her and the others were addressed to the Second Appellant. The fact that the transcript may not contain the totality of her interview is also supported by the fact that the Second Appellant was asked questions 1 to 705 but her questions began at 678. The refusal letter also asserts that she said in interview that they paid £850 a month in rent but this is not appear in the transcript of her interview. In addition, in the refusal letter the First Appellant is said to have explained that her husband knew her ring size as she had normal sized fingers but in the transcript of her interview when asked how her husband would have known her ring size, she replied that "because I am normal height so it's just I think he guessed it". All of this brings into question the accuracy of the transcript.

10. Counsel for the Appellants submitted that the Home Office Presenting Officer had also applied for an adjournment of the appeal before the First-tier Tribunal Judge because he was concerned about the transcript but that his request had been refused. The Record of Proceedings indicates that 40 minutes into the hearing the Home Office Presenting Officer did apply for an adjournment as he wanted to make further investigations about the transcript of the interviews. He did not say that he accepted that the record of the interview had been tampered with but did say that if the hearing proceeded it would be open to the Appellants to argue that it had been or that the full record had not been provided.

11. In the decision letter the Respondent had relied on the content of the marriage interviews to establish that the Appellants had entered into a marriage of convenience. However, at the hearing her own representative was concerned enough about the record to seek an adjournment. The First-tier Tribunal Judge did consider the interview record in paragraph 25 of her decision and reasons and noted that it was "clear from the answers given by the 2nd Appellant that he had difficulty in understanding the questions put to him and often asks for questions to be repeated" but then continues in the next paragraph to make adverse credibility findings on the basis of his answers.

12. This raises serious questions about whether the Appellants had a fair hearing. In addition, as the Respondent had relied on the transcript to found her assertion that they had entered into a marriage of convenience, the First-tier Tribunal Judge needed to make a clear finding as to whether the transcript could be relied upon and she failed to do so.

13. It is clear from *Papajorgj (EEA spouse – marriage of convenience) Greece* [2012] UKUT 00038 (IAC) that there is no burden at the outset of an application to demonstrate that a marriage to an EEA national is not one of convenience. The burden lies on the Respondent. In addition, once this burden has been met an appellant has to rebut any

assertion. In this case the Appellant's ability to do so was jeopardised by the Second Appellant's inability to understand the questions put to him and the possibility, which was accepted by the Home Office Presenting Officer, that the transcript was not a complete one.

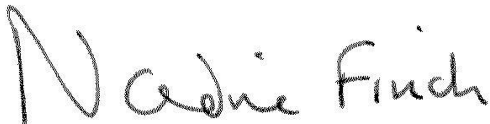
Conclusions

1. The decision and reasons of First-tier Tribunal Judge contained errors of law and should be set aside.

Directions

1. The decision of First-tier Tribunal Judge Jerromes is set aside.

2. The appeal should be remitted to the First-tier Tribunal for a *de novo* hearing before a judge other than First-tier Tribunal Judge Jerromes.



Signed Date 2nd October 2015

Upper Tribunal Judge Finch