



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

Appeal Number: OA/22156/2013

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 27<sup>th</sup> May 2015**

**Decision & Reasons  
Promulgated  
On 23<sup>rd</sup> June 2015**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE RIMINGTON**

**Between**

**ENTRY CLEARANCE OFFICER**

**and**

**MRS KALSOOM ABDUL AZIZ  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

Respondent

**Representation:**

For the Appellant: Mr L Tarlow Home Office Presenting Officer

For the Respondent: Mr Z Syed instructed by the Immigration Advisory Service.

**DECISION AND REASONS**

**The Appellant**

1. The application for permission to appeal was made by the Secretary of State on behalf of the Entry Clearance Officer but nonetheless for the purposes of this decision I will hereinafter refer to the parties as they were

described before the First Tier Tribunal, that is Mrs Kalsoom Abdul Aziz as the appellant and the Entry Clearance Officer as the respondent.

2. The appellant is a citizen of Pakistan born on 10<sup>th</sup> January 1978 and she applied for admission to the United Kingdom as a family member of an EEA Dutch national exercising treaty rights in the UK, namely her husband, Mr Azizi Abdul Aziz, (the sponsor). On 14<sup>th</sup> November 2013 the respondent refused the application under Regulation 12 with reference to Regulation 7 of the Immigration (European Economic Area) Regulations 2006 as she found that the appellant's marriage to the sponsor was one of convenience.
3. The Entry Clearance Officer's decision dated 14<sup>th</sup> November 2013 states that there was no evidence to show the sponsor was visiting the appellant when he came to Pakistan and a letter from the Immigration Advisory Service stated that he communicated with his sponsor via Skype and telephone. They had not provided evidence to show that this was the case. The Entry Clearance Officer was satisfied that the appellant was a party to a marriage of convenience and therefore she was not a family member of an EEA national.
4. The appeal came before Judge Scott, who allowed the appeal under the Immigration Regulations.
5. An application for permission to appeal was made by the respondent on the basis that the respondent maintained that there was insufficient documentation to show there was any connection between the appellant and the sponsor even though the sponsor may have travelled to Pakistan.
6. It was contended that it was not unreasonable to expect documentary evidence to consist of more than just six wedding photographs taken over eight years ago.
7. There was no financial support produced as found by the judge at paragraph 13 of the decision and the records of claimed communication between the couple were non-specific and did not identify the parties involved.
8. Despite this lack of evidence the judge accepted the relationship without giving adequate reasons.
9. In early October 2014 the appellant gave birth to a child of whom the sponsor maintained he was the biological father although there was no evidence of this. He now stated he was more desperate than ever to get his wife and child out of Pakistan. This suggests that the sponsor expected the appellant would bring the child with her if she were allowed entry clearance. This is not an option as the child was not a party to this appeal and an appropriate application would need to be made. It was submitted that the judge had erred by not giving adequate reasons for finding in favour of the appellant.

10. Mr Tarlow, at the hearing before me, relied on the written grounds and maintained the reasoning was inadequate. The judge had identified that the documentary evidence was sparse and thus far gave no reason as to why this was not a marriage of convenience.
11. Mr Syed by contrast argued that the judge had considered the matter adequately. This was not an entry clearance application but an application for a family permit. The appellant had provided details of his passport and details of his travel with his wife to Dubai in the form of visa copies and tickets and had noted that the marriage was contracted in 2006 and before the appellant was an EEA national.
12. Mr Tarlow confirmed that there was no challenge by the Entry Clearance Officer as to the marriage validity, or the documentation, save that it was a marriage of convenience.

### **Conclusions**

13. The judge stated, at paragraph 5 of the decision, that the burden of proving a marriage is not a marriage of convenience rested with the appellant, once the respondent has discharged the evidential burden of showing that there are matters supporting a suspicion that the marriage is in fact one of convenience. However, this approach did not appear to have been followed by the judge as he did not initially set out or assess the cogency of any suspicions (save for recording the explanation of the refusal). Nonetheless this was to the respondent's advantage and therefore not a material error.
14. When assessing the relationship the judge clearly took into account all of the evidence including the documentary evidence and the passport containing the visas to Pakistan and the original travel tickets together with the Viber call history for the period of May to October 2013 and pages of telephone records for the period of 2<sup>nd</sup> May 2013 to 30<sup>th</sup> June 2013. The judge set out his findings in paragraphs 11 to 15.
15. The judge in particular made a finding with regard to the evidence from the sponsor and stated at 11:

*"I found the sponsor to be an honest, earnest and credible witness. I accept his evidence, together with the documents submitted, all of which I find to be consistent and reliable."*
16. The judge went on to note that "the documentary evidence is a little sparse" at paragraph 12 but nevertheless was satisfied on the balance of probabilities that the marriage of the appellant and the sponsor was genuine.
17. The judge in particular made reference to the evidence at paragraph 13 and found:

*"I find it significant that the parties have been married since 2006, four years before the sponsor acquired the Dutch nationality which is the basis of the appellant's application. There is evidence that the sponsor has visited Pakistan on several occasions and I accept that he did so to visit the appellant. The records of the Viber and telephone communications are non-specific, in the sense that they do not identify the parties involved, but again I accept the sponsor's evidence that they represent communications between him and the appellant. On behalf of the respondent, it was pointed out that those records post-date the appellant's application, which is true, but they also pre-date the refusal decision and I am able to take them into account as casting light on the nature of the parties' marriage, although they were not seen by the respondent."*

18. Neither the Entry Clearance Officer nor Mr Tarlow on behalf of the Entry Clearance Officer at the hearing before me challenged the validity of the marriage itself and it was this significant piece of evidence which went to the length of the marriage that the judge found most telling and relevant.
19. Although the records of the Viber telephone communication are non-specific in the sense that they do not identify the parties involved, following **Goudey (subsisting marriage - evidence) Sudan [2012] UKUT 00041** evidence of telephone cards is capable of being corroborative of the contention of the parties that they communicate by telephone, even if such data cannot confirm the particular number the sponsor was calling in the country in question. It is not a requirement that the parties also write or text each other.
20. This case also refers to the fact that where there are no countervailing factors generating suspicion as to the intentions of the parties, such evidence may be sufficient to discharge the burden of proof on the claimant.
21. That said, as I stated earlier, **Papajorgji (EEA spouse - marriage of convenience) Greece [2012] UKUT 00038 (IAC)** establishes that there is only 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. The judge did not appear to address this within the decision but proceeded on the basis that the burden of proof was on the appellant but I repeat I do not find this error to be material.
22. The judge also pointed out at paragraph 4 that the evidential requirements are not restricted by Section 85(5) of the Nationality, Immigration and Asylum Act 2002. Further to **Boodhoo and another (EEA Regs: relevant evidence) [2013] UKUT 00346** evidence which is postdecision may be taken into account. The judge took into account those records which were supplied by the parties to substantiate their assertions that they contacted each other via Skype and telephone. It is a matter for the judge as to the weight to be accorded to the evidence.

23. The judge did have regard to the fact that a child had been born to both appellant and her sponsor and although there was a challenge to this in the permission to appeal, the judge clearly found the appellant's sponsor to be an honest and credible witness and this added to the genuineness of the marriage. In particular the judge had the opportunity of assessing the oral evidence of the sponsor which he found believable and the judge took into account the sponsor's production at the hearing of a letter from a gynaecologist confirming the pregnancy. The fact that the child is not included as a party to the appeal does not disclose an error of law in the decision made by Judge Scott. He confined himself to the appeal of Mrs Kalsoom Aziz.
24. Further to **Shizad (sufficiency of reasons: set aside) Afghanistan [2013] UKUT 85**, although there is a legal duty to give a brief explanation of the conclusions on the central issue the reasons need not be extensive if the decision as a whole makes sense, having regard to the material accepted by the judge. That is the case in this instance. I find that the application for permission to appeal is, in essence, a disagreement with the findings of the judge.
25. I find no error of law which would affect the outcome and the decision shall stand.

Signed

Date 14<sup>th</sup> June 2015

Deputy Upper Tribunal Judge Rimington