



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

Appeal Number: IA/18700/2014

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 30<sup>th</sup> March 2016**

**Decision & Reasons  
Promulgated  
On 12<sup>th</sup> April 2016**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE SHERIDAN**

**Between**

**WAQAR AHMED  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation**

For the Appellant: Mr D Balroop, Counsel instructed by Rainbow Solicitors  
For the Respondent: Mr T Wilding, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant, a citizen of Pakistan born on 12 April 1982, appeals against the decision of First-tier Tribunal ("FtT") Judge White, promulgated on 7

September 2015, whereby his appeal against the respondent's decision to refuse him a residence card as a spouse of an EEA national was dismissed.

2. The appellant entered the UK as a student in March 2008. His leave was subsequently extended as a Tier 1 (Post Study Work) Migrant until 1 November 2013.
3. On 23 September 2013 he married a Hungarian citizen.
4. On 23 October 2013 he applied for a residence card as a spouse. The application was refused on 8 April 2014 on the basis that his marriage was one of convenience.

#### Decision of the First-tier Tribunal

5. The appellant appealed and his appeal was heard by FtT Judge White. The FtT accepted that the appellant was married to an EEA national who was exercising Treaty Rights and identified that the issue in the case was whether the relationship was genuine or a marriage of convenience.
6. At paragraph [12] the FtT referred to the Upper Tribunal decision in Papajorgji (EEA spouse - marriage of convenience) Greece [2012] UKUT 38 (IAC) and directed itself that "the legal burden of proving that a marriage is one of convenience will lie ultimately on the respondent."
7. The FtT then considered in detail the answers the appellant and his wife gave in interviews that took place on 20 March 2014 and identified a number of what it considered to be inconsistencies and discrepancies. It also noted the absence of supporting evidence from friends or family.
8. In respect of documentary evidence provided by the appellant to show that he and his wife were cohabiting, the FtT found that the documents indicated they were living at the same address but noted that no evidence was before it regarding the size and overall occupation of the property. The FtT also found that the appellant and his wife had a bank account in their joint names dating from 22 August 2013 but noted that the account did not show there to be regular payments to cover the rent.
9. The FtT concluded that "on the balance of probabilities the respondent has proved that this is a marriage of convenience".

#### Grounds of appeal and submissions

10. The grounds of appeal submit that the FtT erred in respect of the burden of proof and misapplied Papajorgji. They also argue that the credibility findings were not properly reasoned and clear findings were not made in respect of the documentary evidence showing cohabitation.

11. Before me, Mr Balroop focused almost entirely on the FtT's treatment of the documentary evidence. He drew my attention to paragraphs [27] - [29] of the decision, arguing that before drawing adverse conclusions from the documentary evidence the FtT should have put its concerns to the appellant. At paragraph [27] the FtT stated that evidence was not put before it as to the size and overall occupation of the appellant's property. At paragraph [28] the FtT stated that it did not have evidence about the status of the appellant and his wife's joint bank account prior to it becoming a joint account. At paragraph [29] the FtT found that the joint bank account did not show how the rent was paid. Mr Balroop contended that the FtT should have put these concerns to the appellant and that it was unfair for it not to have done so.
12. Mr Wilding argued, firstly, that the FtT properly applied the burden of proof. In respect of the appellant's other grounds, he contended that the decision was based on significant discrepancies in the interviews and that this would support the FtT 's conclusion irrespective of concerns about the documentary evidence. In any event, in respect of the documentary evidence, he argued that the appellant was represented and it was for him (and his representative) - not the judge - to make his case and provide evidence in support of it.

#### Consideration

13. Where, as in this case, an allegation is made that a marriage is one of convenience, the ultimate legal burden of proof lies with the party making the allegation; ie the respondent.
14. The FtT stated at paragraph [12], after summarising the findings by the Upper Tribunal in Papajorgi, that:

*"the legal burden of proving that a marriage is one of convenience will lie ultimately with the respondent"*(emphasis added)
15. At paragraph [31] the FtT stated again that the burden of proof was on the respondent. The FtT found that it was:

*"satisfied on the balance of probabilities that the respondent has proved that this is a marriage of convenience"* (emphasis added).
16. It is clear from the decision that the FtT has correctly identified the relevant burden of proof and then has proceeded to apply it. There is no merit to the appellant's argument to the contrary.
17. Nor do I consider there to be any merit to the appellant's other grounds of appeal. This is a comprehensive and cogent FtT decision. For a number of reasons, which are clearly explained, the FtT found there to be inconsistencies and discrepancies in the evidence given by the appellant and his wife which undermined their credibility and enabled the respondent

to demonstrate, on the balance of probabilities, that this was a marriage of convenience. These include, by way of example, that:

- a. The appellant's and his wife's name are both on a tenancy agreement dated 1 May 2013 even though they only met in mid April 2013 and they had not, by their own accounts, moved in together by that date.
- b. The appellant and his wife gave different answers as to whether they met inside or outside at their first meeting.
- c. The appellant and his wife gave different answers as to where the appellant's wife was living, and whether she was studying at college, when they met.
- d. The appellant was unable to correctly identify days his wife had worked in the week of the interview.

18. I also do not accept Mr Balroop's argument that the judge acted unfairly when considering the documentary evidence about cohabitation and the joint bank account. It was not for the judge to highlight or identify matters that the appellant might wish to expand upon or address to support his case. Rather, the judge's role was to evaluate and consider the evidence before him, which in my view is what the judge has done.

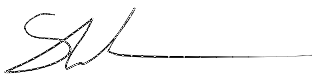
19. In any event, even if (which I do not accept) there was an error in the approach taken by the FtT in respect of the documentary evidence, such an error would not have been material as it is clear that the FtT was entitled, based on the evidence before it, to conclude that the respondent had shown to the requisite standard of proof that the marriage between the appellant and his wife was one of convenience.

#### Decision

20. The appeal is dismissed.

21. The decision of the First-tier Tribunal did not involve the making of a material error of law and shall stand.

Signed



Deputy Upper Tribunal Judge Sheridan

Dated: 4 April 2016