



IAC-FH-CK-V1

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

Appeal Number: IA/29770/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 21 January 2016**

**Decision & Reasons Promulgated
On 11 February 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAMBERLAIN

Between

K K

~~(ANONYMITY DIRECTION NOT MADE)~~

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr. M. S. Islam, Solicitor, Law Dale Solicitors

For the Respondent: Ms A Fijiwala, Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge Juss promulgated on 17 July 2015 in which he dismissed the Appellant's appeal against the Respondent's decision to refuse to issue a residence card as confirmation of her right to reside in the United Kingdom under the Immigration (European Economic Area) Regulations 2006.
2. Permission to appeal was granted as follows:
"However it is arguable that the Judge erred, bearing in mind that the burden of establishing this was a marriage of convenience rests with

the Secretary of State (Papajorgji (EEA spouse - marriage of convenience) Greece [2012] UKUT 00038 (IAC)). It is arguable that the Judge erred in finding this to be a marriage of convenience without giving proper consideration to the fact that the Appellant was a victim of domestic abuse at the hands of her husband and had suffered a miscarriage caused by that violence. The Upper Tribunal indicated in Papajorgji that evidence of a child can be evidence of a genuine marriage as, presumably can cohabitation.”

3. The Appellant attended the hearing. I heard submissions from both representatives, following which I announced that I found the decision involved the making of an error of law. I set the decision aside and remitted it to the First-tier Tribunal for rehearing. My full reasons are set out below.

Error of law

4. The Appellant was unrepresented before the First-tier Tribunal and there was no appearance on behalf of the Respondent. There was therefore no cross-examination of the Appellant. It is accepted in the skeleton argument that the Appellant had not really dealt with the refusal letter in her statement. However, the Appellant gave oral evidence at the hearing of the domestic violence she had suffered. She also provided documentary evidence. In paragraph [11] of the decision the judge records that the Appellant was badly beaten up and kicked in the stomach “which led to the miscarriage of her baby”. He records that the police were called and that her husband has been prosecuted for domestic violence.
5. However when coming to his findings the judge makes no reference to the evidence of domestic violence, or to the pregnancy [13]. He makes no findings on either of these issues. It was accepted by Ms Fijiwala that the judge had failed to address the issue of the Appellant’s pregnancy in his findings. I find that, following Papajorgji, this evidence was relevant to the issue of whether or not the Appellant’s marriage was a marriage of convenience. I find that the decision fails to deal with it. The judge’s findings are very brief. There are only three paragraphs which contain findings, [13] to [15], and only paragraph [13] contains material which can be described as relevant. The reasons given in paragraph [14] relating to the Appellant’s brother marrying a Czech national are irrelevant to whether or not her marriage was one of convenience. Similarly the reasons given in paragraph [15] are not relevant to the issue of marriage of convenience.
6. In failing to make findings as to the Appellant’s pregnancy, I find that the judge has failed to take into account relevant matters, and has failed to make findings on material matters. I find that the error is material, given that the application was refused on the basis that the marriage was one of convenience.

7. In relation to the disposal of this appeal, as discussed at the hearing, the Appellant's situation has changed since her application, and continues to change. However, the Tribunal can consider any and all bases on which an Appellant has a right to reside in the United Kingdom under the Regulations. As I have stated above, this decision is very brief, the reasoning consisting of only three paragraphs. The judge has failed to take into account all relevant matters. I considered that there had been a failure fully and adequately to assess the evidence sufficient for the Upper Tribunal to be able to remake the decision. In the interests of justice, it was right to remit the appeal to the First-tier Tribunal for a full hearing of the evidence.

Notice of Decision

The appeal involves the making of a material error of law and I set it aside.

The appeal is remitted to the First-tier Tribunal for rehearing.

Signed

Date 8 February 2016

Deputy Upper Tribunal Judge Chamberlain