



**Upper Tribunal
(Immigration and Asylum Chamber)
EA/07000/2016**

Appeal Number:

THE IMMIGRATION ACTS

Heard at Field House

**Decision &
Promulgated
On 6 June 2017**

Reasons

On 26 May 2017

**Determination given orally at the
hearing**

Before

UPPER TRIBUNAL JUDGE MCGEACHY

Between

**MRS RHODORA DE VERA
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr D Krushner, of Counsel.

For the Respondent: Ms Z Ahmad, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of the Philippines who came to Britain initially as a student. On 23 September 2011 she married Tomasz Yaroslaw Jodlowiec, a Polish citizen. She applied for a residence permit as the wife of an EEA national and that was granted valid until February 2017. However, she lost that permit and when she applied for a replacement the respondent sent an officer to the address which she had given. A resident at that address was asked if she recognised a photograph of the appellant

and she replied that she did not. The appellant and her husband were not called to interview to be questioned about their marriage but the appellant was immediately refused.

2. The refusal was appealed and came before Judge Malins. Judge Malins heard evidence from the appellant and her husband, did not find them credible and dismissed the appeal. She commented that there were very few photographs of the wedding and that there were only the two witnesses at the wedding and so on. She expressed surprise that the appellant was working away from the home where she lived with her husband.
3. The appellant then put in a further application. That was refused and was appealed but it was decided that the appeal should be dealt with on the papers. It came before Judge Taylor, who dismissed the appeal. He relied on the decision of Judge Malins. That determination was then appealed further to the Upper Tribunal and the matter came before me on 4 April 2017.
4. I set aside the decision of the First-tier Judge and gave my reasons in a decision dated 19 April which is annexed hereto. In that decision I commented on the determination of Judge Malins. In short, I felt that she had speculated about matters such as where the appellant was working and reached a conclusion which surprised me. However, she did give reasons for her conclusion and of course Judge Malins' decision as indeed that of Judge Taylor are the starting points in any determination which I now make.
5. The appellant has given evidence before me as has her husband. The appellant's evidence in brief is that they married for love. They lived together until there was an incident which led to the first separation. She eventually returned and since December of last year has brought into place a second separation although they are still living together and indeed it is the case that as of today the appellant's mother, who is visiting from the Philippines, is living with them.
6. The appellant had produced a number of photographs which show her and her husband on their wedding day and visiting a number of places around the country on different occasions. These include Bath, Stonehenge, Dover and also places in London such as Twickenham and Kingston as well as photographs of them in the flats where they were living.
7. The central issue, as I have said, is whether or not this was a genuine marriage. I have heard evidence not only from the appellant but also from her husband and I have considered his witness statement. I can only come to the conclusion, and I think it is a conclusion which is reached applying the very high standard of proof, that this was a genuine marriage. The appellant and her husband loved each other and they married and, as the appellant said, they plan to live together for the rest of their lives.

8. It is the case that there have been troubles in the marriage and these have been caused, I consider, not only by financial difficulties which have led to the appellant working away from home but rather sadly because of the way in which her application was dealt with and the treatment in the first appeal but I am convinced that this was a genuine marriage and that this couple loved each other and wished to live together and there is absolutely nothing to indicate anything other than that the marriage was genuine.
9. That is the central fact in this case. The appellant entered into a genuine marriage with an EEA national and they are still married. For that reason I allow this appeal.
10. I will make two further comments. I understand that the appellant had a residence permit until February of this year. That is a factor that will have to be taken into consideration when making the further submissions that will follow on this decision. I have seen photographs of the appellant and her husband and they have both given evidence before me. I am aware that there have been strains and stresses in the marriage caused by external factors. It is not for me to advise them as to what they should do now but I would hope that there might be a measure of reconsideration of the situation now that the immigration status is resolved but that is obviously a personal comment, so the appeal is allowed.

Notice of Decision

The appeal is allowed under the Immigration (EEA) Regulations 2006.
No anonymity direction is made.



Signed

Date 5 June 2017

Upper Tribunal Judge McGeachy

Annex



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

Appeal Number: EA070002016

THE IMMIGRATION ACTS

Heard at Field House

**Decision & Reasons
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On 4 April 2017

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Before

UPPER TRIBUNAL JUDGE MCGEACHY

Between

MRS RHODORA DE VERA

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: In person

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

DECISION AND DIRECTIONS

1. The appellant, a citizen of the Philippines appeals, with permission, against a decision of Judge of the First-tier Tribunal I F Taylor who in a determination promulgated on 23 August 2016 dismissed the appellant's appeal against a decision of the Secretary of State to refuse her a

residence card as confirmation of a right of residence as the spouse of an EEA national exercising Treaty rights in the United Kingdom.

2. The appellant and Tomasz Yaroslaw Jodlowiec, a citizen of Poland, married on 23 September 2011. The appellant then applied for leave to remain as the spouse of an EEA national exercising Treaty rights. She was granted a registration permit as the spouse of an EEA national. She lost that document and applied for a new document but her application was refused. She appealed and her appeal was heard before Judge of the First-tier Tribunal Malins on 1 June 2015 and dismissed. Judge Malins heard evidence from both the appellant and her husband. She took into account that the West London Arrest Team had visited an address in Cromwell Road, Hounslow. An occupant of the house had stated that they had just moved into the house and did not recognise the appellant's name or photograph. Another person living in the house had said that the appellant's husband had lived there on his own but that he had moved out two weeks before. The Secretary of State, on that evidence concluded that the appellant and her husband were not living together and that therefore this was a marriage of convenience.
3. Judge Malins found that neither the appellant or her husband were credible stating that there were certain discrepancies about gifts that had been given by the appellant to her husband for his last birthday and that he had given to her and what they had done the day before the hearing. She also placed weight on the fact that the appellant had said that she lived "on and off with her husband."
4. Judge Malins placed weight on the fact that the appellant was working in Essex, some distance from the home which she claimed to share with her husband and stated that:

"This arrangement is wholly inconsistent with the appellant and her husband being a young couple who wish to spend their lives together in a genuine marriage. It is implausible - in the following circumstances which I find:

- (i) Can the Edgware Agency not find the appellant work nearer to Hounslow, so that she does not need to toil over to the east coast each week? It would be appear to be a large organisation which in any event is based in north London. Hounslow is a borough in west London;
- (ii) Is it a viable arrangement for the appellant to go Westcliff-on-Sea for only three days' employment given the high cost of fares and the deduction she suffers for the cost of her accommodation, she really does live in Hounslow? If this is actually the case then the appellant's earnings would be thin indeed and the exercise, barely worthwhile, given the alternatives presented by other agencies or work patterns. It is the case, that nursing agencies are always short of staff;

- (iii) Why could the husband not obtain employment in his fluid area of work, in Essex, if it is the case that this is where the appellant has to work where in any event, it is likely to be the working conditions would be more congenial;
 - (iv) There is actually no evidence other than the husband's and the appellant's evidence that she does return to Hounslow for four days a week."
- 5. Judge Malins went on to state that the appellant's and her husband's domestic living arrangements were not as they were claimed to be in the light of the employment documents which they produced and then stated that because there were only two legally required witnesses present at the wedding and no other family or friends that this indicated that this was a marriage of convenience. She placed weight on the fact that there were no photographs of the wedding.
- 6. Although the determination of Judge Malins was appealed in the First-tier permission was not granted. Instead the appellant went on to make a further application and when that was turned down asked that the appeal be dealt with on the papers. It was in those circumstances that it came before Judge Taylor.
- 7. Judge Taylor placed weight, as he was required to do, on the determination of Judge Malins. He then wrote, in paragraph 11:-
 - "11. It would appear that the appellant is now relying upon all of the documentation she relied upon when her appeal was heard before IJ Malins. The only new evidence is an email from the appellant's landlord at 167 Cromwell Road, the handwritten statement by a resident of that property, a bank statement relating to that resident, some train tickets and a bundle of photographs. However, these documents do not amount to a material change in the factual situation which remains the same namely it has been determined by Immigration Judge Malins that the appellant entered into a marriage of convenience on 23 September 2011 and whilst that decision was subjected to a challenge that challenge has been unsuccessful and is appeal exhausted and therefore I regard the issues as settled by the first Adjudicator and make my findings of fact in line with the earlier determination".
- 8. He went on to say that as the evidence was the same as that before Judge Malins and that the appellant was merely trying to re-litigate her appeal.
- 9. The appellant wrote her application for leave to appeal herself. Permission was granted by Judge of the First-tier Tribunal Scott-Baker who stated inter alia:-

- “ ... the appellant had produced further new evidence which had not been before the original judge but at [11] of the decision the FTT Judge remarked that the documents did not amount to a material change in the factual situation but gave no findings for reaching that decision and failed to analyse such evidence.
5. It is therefore considered that the absence of reasoning in decision amounts to an arguable error of law.”

10. At the hearing before me the appellant represented herself. She gave an explanation, at some length, about why she had had to work in Essex, because of the difficulty of finding work, and the difficulties she and her husband had had with accommodation but stated that her husband now had a rented flat in which they could both live. She has two jobs which are required to pay for living expenses and her husband is also working.
11. This is, of course, not an appeal against the decision of Judge Malins but I would comment that I consider that much of what she wrote was speculative and not based on findings of fact. It was mere speculation of her to suggest that the appellant should have been able to get a job nearer to where she was living in London and indeed she speculated on the nature of the marriage and seemed to place no weight on the fact that the appellant and her husband both gave evidence that theirs was a genuine marriage.
12. Be that as it may I have considered the determination of Judge I F Taylor and in particular paragraph 11 thereof. I agree with Judge Scott-Baker that insufficient reasoning, if any, was given by Judge Taylor for rejecting the new evidence. I adopt the reasoning given by Judge Scott-Baker when granting permission. While I have considerable sympathy with the forceful arguments of Mr Kotas I consider that the lack of reasoning in Judge Taylor’s decision does amount to an error of law.
13. Moreover, I am fortified in my decision when I consider the new evidence that was submitted. In particular, I have considered the photographs which were in an envelope on the file before Judge Taylor. They not only show the couple on their wedding day – the appellant in what is clearly a wedding dress – and the couple showing very clear affection towards each other on that day. Moreover, there are large number of other photographs of the couple in different places (including Stonehenge and Bath) at different times of the year, in different clothes and alone and also with friends. These photographs are clearly very persuasive evidence and not to comment on them or give reasons for rejecting them as evidence of a genuine marriage was clearly an error of law.
14. I therefore set aside that decision. I consider that the appeal should proceed to a hearing afresh before me in the Upper Tribunal.

Notice of Decision

The decision of the judge in the First-tier is set aside.

Directions

1. The appeal will proceed to a hearing afresh before me in the Upper Tribunal on 26 May 2017.
2. The appellant should produce a bundle of all documents she wishes to rely on at the hearing including documents relating to her and her husband's employments, further photographs, if any, household bills and other documents addressed to both the appellant and her husband. The appellant and her husband should also produce a detailed witness statement setting out the chronology of their marriage including the date on which they met and the places where they lived. Those documents and photographs should be served on the respondent and the tribunal at least 10 days before the hearing.

No anonymity direction is made.



Signed

Date 18 April 2017

Upper Tribunal Judge McGeachy