



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: EA/00804/2016

THE IMMIGRATION ACTS

Heard at Field House
On 26th March 2018

Decision & Reasons Promulgated
On 23rd May 2018

Before

Upper Tribunal Judge Chalkley

Between

OLUWASEUN [O]
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant – 26th March, 2018: Ms N Bustani of Counsel

For the Respondent – 26th March, 2018: Ms Alex Everett, Senior Home Office Presenting Officer

For the Appellant – 15th May, 2018: In person unrepresented

For the Respondent – 15th May, 2018: Mr S Kotas, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a Nigerian citizen and was born on [] 1979. She made an application to the respondent for a permanent residence card on the basis of a retained right of residence as the former spouse of an EEA national. The respondent refused her application on 13th March 2016 and the appellant appealed under Regulation 26 of the

Immigration (EEA) Regulations 2006 to the First-tier Tribunal. Her appeal was heard by Judge A Khawar at Taylor House on 24th April 2017.

2. It was asserted by the respondent that the appellant's marriage had been one of convenience. The judge therefore took account of the Upper Tribunal decision in *Papajorgji (EEA spouse – marriage of convenience) Greece* [2012] UKUT 00038 (IAC) where the Tribunal held:-

- “i) There is no burden at the outset of an application on a claimant to demonstrate that a marriage to an EEA national is not one of convenience.
- ii) *IS (marriages of convenience) Serbia [2008] UKAIT 31* establishes only that there is 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.
- iii) The guidance of the EU Commission is noted and appended.”

The judge said at paragraph 21:-

“On the evidence before me and in particular due to somewhat the vague and tenuous nature of the account as set out in her post application interview (effectively a marriage interview) conducted on 14th December 2014, I am satisfied that the Respondent was entitled to conclude reasonable grounds for a suspicion that the Appellant's marriage was one of convenience for immigration purposes.”

3. Having done that the judge then considered the appellant's evidence at paragraphs 22 to 26 (see below) and at paragraph 27 of his determination said this:-

“On the totality of evidence as presented by the Appellant in her marriage interview, I am satisfied that the Respondent correctly concluded a reasonable suspicion of the Appellant's marriage being one of convenience for immigration purposes. Accordingly, the burden of proof in this case is on the Appellant to establish that the marriage was genuine and not one of convenience.”

4. The judge went on to dismiss the appellant's appeal. The appellant submitted grounds of application, none of which were thought to identify any properly arguable error of law, but in granting permission Upper Tribunal Judge Perkins said this:-

- “1. This is a marriage of convenience case. It must be arguable that the Judge's direction at paragraph 27 of the Decision and Reasons is incompatible with the decision of the Supreme Court in *Sadovska & Anor v Secretary of State for the Home Department (Scotland)* [2017] UKSC 54 (26 July 2017). This is just about within the scope of Ground 2 of the Renewal Grounds and I give permission on that ground.
- 2. I do not give permission on ground 1. The alleged deficiencies of the Appellant's then representative do not constitute an error of law by the Tribunal.”

Ground 2 simply asserted that the judge failed to consider the evidence properly and that resulted in an error of law.

5. At the hearing before me on 26th March, Ms Bustani sought to extend the grounds of appeal. She asked that she be permitted to renew the application. I refused since it had already been considered by an Upper Tribunal Judge and there had been more than enough time to give notice to the respondent that such an application was to be made. I told her that it occurred to me that since the appellant has had a child whilst she has been in the United Kingdom, if it could be shown that the child were a British subject, it may be that the matter would need to be considered again. The appellant indicated that she had had a child by somebody who has now remarried and does not want anything further to do with her. I indicated that I would nevertheless adjourn to enable those representing the appellant to obtain any such evidence that they are able to obtain, and I reminded Counsel that those representing the appellant could, if they wished apply for a witness summons.

6. At the hearing before me on 15th May the appellant appeared in person. She told me that she did not have any evidence as to her son's father's immigration status. Addressing me briefly Mr Kotas suggested that the judge had erred in his direction at paragraph 27. However, given what the judge had said at paragraphs 22 to 26 it is difficult to see how the judge could have reached a different conclusion from the one that he did, that the marriage is not genuine and one of convenience, so he suggested that there was simply no need for the matter to be heard again. He invited me to consider what the judge had said at paragraphs 22 to 26 and to remake the decision. I reserved my decision.

7. The judge says at paragraphs 22 to 26:-
 - “22. At the conclusion of the Appellant's evidence and during his submissions the Appellant's representative submitted that the Respondent has failed to discharge the burden of proof upon her to establish reasonable grounds/suspicion of a marriage of convenience. I disagree. I agree with the Respondent's account that at various junctures within her marriage interview the Appellant proffered [an] inconsistent and vague account and indeed displayed a lack of knowledge in relation to her husband (to whom she was allegedly married for five years) which belies such lengthy marriage. As examples I note that at question 31 of part 1 of the interview the Appellant provided an inconsistent account as to when her relationship commenced with the Sponsor. She initially said.. 'I would say 2009' ... She then stated .. 'we started the relationship about a month after we met'. This is clearly inconsistent because the Appellant stated, earlier in the interview, that she first met the Sponsor 'some time in 2008' (Q17 of part 1 of the interview). In itself the Appellant's suggestion of meeting 'some time' in 2008 is vague. She was assisted by the interviewing officer as to the approximate period by the interviewer proffering the possibility of winter or summer and the Appellant opted for summer 2008. Consequently if the Appellant had genuinely met the Sponsor in the summer of 2008 and they commenced a relationship about a month after they met, she would not have been stating that her relationship commenced in 2009 – as she clearly asserted at Q31.

 23. Another significant example is provided by the fact that the Appellant was not able to name any of the care homes where her husband allegedly worked. During oral evidence she stated that he had worked at three care homes during their marriage and she could only name one of them and that was only because she had also worked there.

24. Furthermore, an extremely odd feature is that the Appellant claims that her marriage was ongoing until July 2014 despite the fact that she gave birth to someone else's child on 10th September 2012!
 25. The Appellant's case is that she had a relationship with someone else because of the Sponsor's resistance to wanting children; she maintains that she always wanted a family with the Sponsor despite that she already had two children from two different men who lived in Nigeria. At Q39 of the marriage interview (page 12 of the interview record), the Appellant claims that the Sponsor told her that he could not have children only after she discovered that she was pregnant and as a result ... 'I was shocked because I thought if I'd known that before then I don't think I would have gone into the marriage ... I was hoping to have kids in the marriage and then when he said that to me it took me a long while to believe him ...'. I do not find the Appellant's assertions made in this rather lengthy purported explanation to be reasonably likely to be true. The Appellant is now 37 years of age and has obviously been involved in relationships in Nigeria due to the fact that she has two children from two different relationships and also explains other failed relationships at paragraph 4 of her witness statement. Consequently, if the Appellant was truthfully intent upon having children in her marriage to the Sponsor, it is highly improbable that she would not have discussed having children with the Sponsor prior to their marriage.
 26. Yet another example of a vague account was the identity of individuals who attended their wedding. At Q16 and 17 (page 9 of the interview) the Appellant indicates that the witnesses were her brother, a friend of the Sponsor and her uncle. When questioned as to identity of the 'friend' the Appellant stated ... 'I think it was Dave, Dave ...'. She was obviously uncertain about his first name and did not know his surname."
8. Given those findings I agree with the submissions of Mr Kotas. On the totality of the evidence I am not satisfied that the appellant has discharged the burden of proof to establish that her marriage to the sponsor was not one of convenience.
 9. The making of a decision by Judge A Khawar **did involve the making of an error of law but such error was not material**. I uphold his decision. The appellant's appeal is dismissed.

Richard Chalkley

Upper Tribunal Judge Chalkley

TO THE RESPONDENT
FEE AWARD

I have dismissed the appeal and therefore there can be no fee award.

Richard Chalkley

Upper Tribunal Judge Chalkley

dated 18 May 2018