



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

Appeal Number: HU/17910/2018

THE IMMIGRATION ACTS

**Heard at Field House
On 13 August 2019**

**Decision & Reasons Promulgated
On 20 August 2019**

Before

UPPER TRIBUNAL JUDGE LANE

Between

**NINA LAIZANE
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

ENTRY CLEARANCE OFFICER

Respondent

Representation:

For the Appellant: Not present or represented

For the Respondent: Mr Melvin, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant was born on 5 August 1985 and is a female citizen of Ukraine. She applied for an EEA family permit to accompany Elmar Laizans (whom she claims is her spouse to the United Kingdom). Mr Laizans is a citizen of Latvia. The Entry Clearance Officer, in a decision issued on 19 March 2018, refused the application. The appellant appealed to the First-tier Tribunal which, in a decision considered on the papers and promulgated on 14 May 2019, dismissed the appeal. The appellant now appeals, with permission, to the Upper Tribunal.

2. The appellant is living in Riga, Latvia. She has no United Kingdom representative. She did not attend the initial hearing. I am satisfied that the appellant was served with notice of the hearing by post on 23 July 2019. In the circumstances, I proceeded with the hearing in the absence of the appellant.
3. Mr Melvin, who appeared for the Entry Clearance Officer, agreed that the judge had erred in law for the reasons by the judge who granted permission at [3-4]. The judge treated the appeal as an appeal made on human rights grounds. This is problematic (see *Amirteymour [2017] EWCA Civ 353*) plainly amounts to an error of law. The judge also fell into error at [7] by holding that the burden of proof in the appeal (which concerned an allegation by the Entry Clearance Officer that the appellant is a party to a marriage of convenience) rested on the appellant. It is clear that the burden of proof rests on the party who makes the allegation, namely the Entry Clearance Officer (see *Sadovska [2017] UKSC 54*). Accordingly, I set aside the First-tier Tribunal decision.
4. I have proceeded to remake the decision. The burden of proving that the appellant is a party to a marriage of convenience rests on the Entry Clearance Officer. The standard of proof is the balance of probabilities.
5. The Entry Clearance Officer considered that the appellant was a party to a marriage of convenience for several reasons detailed in the notice of refusal. The appellant claimed to have entered a relationship with the man she claims is a husband in April 2009. The appellant subsequently made a number of applications to enter the United Kingdom. In October 2012, the appellant claimed in an application form that she was single, a statement which he repeated June and August 2014 and again in July 2015. Mr Laizans was not referred to in these applications. Further, in March 2017, the appellant claimed that her wedding had been planned for April 2017. However, the certificate of marriage submitted to the Entry Clearance Officer indicated that the marriage had taken place on 17 March 2017. The Entry Clearance Officer considered that these discrepancies cast doubt upon the genuineness of the marriage.
6. I find that the discrepancies and anomalies referred to by the Entry Clearance Officer are sufficiently serious to discharge the burden of proving that the marriage is not genuine or, at the very least, discharge any initial burden and the respondent following which it is for the appellant to provide an explanation. I acknowledge that it is not for the appellant to prove that the marriage is genuine but, in the light of the arguments advanced by the Entry Clearance Officer, it is necessary for the Tribunal to consider all the evidence, including that submitted by the appellant, in order to determine the appeal. The evidence submitted by the appellant is scant and unhelpful. The appellant has submitted copies of airline tickets and boarding passes in the names of the appellant and her claimed husband and also photographs which show an unidentified man and woman and which, in some cases, appear to bear the date upon which the photograph may have been taken. The probative value of this evidence is

very limited indeed. The fact that two individuals may buy airline tickets for the same flight proves nothing at all regarding the nature of a marriage. Likewise, photographs produced shorn of any narrative or context prove nothing. Having considered all the evidence I conclude that the Entry Clearance Officer in this instance has proved that the appellant is party to a marriage of convenience. Accordingly, the appeal is dismissed.

Notice of Decision

I set aside the decision of the FTT. I have remade the decision. The appellant's appeal against the decision of the Entry Clearance Officer dated 19 March 2018 is dismissed.

Signed

Date 13 August 2019

Upper Tribunal Judge Lane