



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-006253
First-tier Tribunal No:
EA/02619/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 17 May 20223

Before

UPPER TRIBUNAL JUDGE NORTON-TAYLOR

Between

ELSON BABANI
(NO ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr N Ahmed, Legal Representative from Evolent Law
For the Respondent: Mr E Terrell, Senior Presenting Officer

Heard at Field House on 14 April 2023

DECISION AND REASONS

Introduction

1. The Appellant appeals with permission against the decision of First-tier Tribunal Judge Sullivan (“the judge”), promulgated on 4 August 2022. By that decision she dismissed the Appellant’s appeal against the Respondent’s refusal of his application under the EUSS.

2. The Appellant is a citizen of Albania who entered into a marriage with a Romanian citizen in January 2019. He arrived in this country in March of that year and initially made an application under the Immigration (European Economic Area) Regulations 2016 ("the 2016 Regulations"). That application was refused and a subsequent appeal withdrawn. The EUSS application was made in June 2021 and was refused on 31 January 2022. The Respondent asserted that the marriage was one of convenience. The Appellant brought his appeal to the First-tier Tribunal under the Immigration (Citizens' Rights Appeals) (EU Exit) Regulations 2020.
3. The judge directed herself correctly in law as to the relevant legislative framework and authorities, before at [13] listing the evidence which she had taken into account. Her assessment of the evidence and findings thereon begins at [15] with the confirmatory statement that she had considered all the evidence before reaching her conclusion. That same confirmatory statement was reiterated at the beginning of [32]. In between those two points, the judge conducted what was, on any view, a careful analysis of what she considered to be the most important aspects of the evidence before her, particularly that emanating from the Appellant and his wife, much of it emanating from interviews conducted in February 2020.
4. Over the course of a number of paragraphs, the judge found that there were material inconsistencies in the evidence which ultimately led her to conclude that the Respondent had demonstrated that the marriage had indeed been one of convenience only.

The grounds of appeal

5. The Appellant's admirably concise grounds of appeal assert that the judge had failed to place "adequate weight" on particular documentary evidence contained in the Appellant's bundle, namely statements from the wife's son and mother and the Appellant's mother (all of whom were residing abroad at the time of the hearing before the judge). The grounds go on to say that this evidence was of "significant importance"

and that the judge's failure to specifically deal with it constituted a material error of law.

The hearing

6. At the error of law hearing I received helpful and concise submissions from both representatives, for which I am grateful.
7. The essence of Mr Ahmed's case was that the three individuals were "uniquely placed" to provide confirmatory evidence as to the genuineness of the Appellant's relationship with his wife. Indeed, they may have been better placed to do this than the witnesses who had in fact attended the hearing. In particular, the wife's son had confirmed that the Appellant and the wife had lived together in Romania with him. Mr Ahmed acknowledged that these individuals had not been called to give evidence (as they were outside of the United Kingdom), but the failure of the judge to make any reference to their evidence in the section of her decision setting out her findings, was erroneous.
8. In essence, Mr Terrell submitted that when read holistically and sensibly the judge's decision disclosed no material errors of law.

Conclusions

9. I conclude that there are no material errors of law in the judge's decision.
10. I remind myself that appropriate restraint should be shown before interfering with a decision of the First-tier Tribunal, particularly where such a decision has involved hearing and assessing evidence and weighing that up in light of the relevant legal framework (in respect of which there has been no challenge to the self-directions).
11. In this case, the judge clearly set out the evidence with which she was concerned at [13] and confirmed at three points in her decision that she had taken all of the evidence into account. I agree that in an ideal world, it would have been better if the judge had dedicated a specific (and probably only brief) paragraph to the evidence from the three individuals in question. However, reading her decision sensibly and holistically and having regard to the witness statements from the three

individuals concerned, I am satisfied that the judge's decision is free of any errors of law.

12. She dealt in significant detail with what she was fully entitled to consider to be the core evidence in the case, namely that emanating from the Appellant and his wife. This evidence related to particular details relating to, for want of a better description, their day-to-day lives. The judge was fully entitled to find that there were material inconsistencies and it is important to note that those findings have not specifically been challenged.
13. The three witness statements from the individual's concerned are, to put it bluntly, brief and lacking in any significant content. I am not surprised in many ways that the judge did not deal with it in any detail in her decision because there was no real detail with which to engage. In any event, the lack of content coupled with the fact that those three witnesses did not attend the hearing (there had been no application to obtain permission from the relevant national authorities for evidence to be given from abroad in light of the guidance set out in Agbabiaka (evidence from abroad; Nare guidance) [2021] 00286 (IAC) leads me to conclude that it cannot sensibly be said that the judge's failure to have specifically mentioned that evidence in her section on the assessment and findings of fact renders her overall conclusion unsustainable. I am satisfied that she did in fact have the evidence in mind when carrying out her overall assessment and her failure to have specifically addressed it could not have made any difference to the outcome of the appeal.
14. I bear in mind Mr Ahmed's point about the wife's son's evidence, but I re-emphasise the lack of any detail in his statement and the fact that it was tested in any way. I also acknowledge the point that such evidence is in theory capable of going to the intentions of the party at the time of the marriage and not simply the existence of an ongoing genuine relationship, but, in this particular case, that theoretical possibility cannot avail the Appellant.

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15. For these reasons the Appellant's appeal to the Upper Tribunal is dismissed and the decision of the First-tier Tribunal stands.

H Norton-Taylor

**Judge of the Upper Tribunal
Immigration and Asylum Chamber**

Dated: 20 April 2023