



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-003050

First-tier Tribunal No: EA/08391/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:

18th September 2023

Before

UPPER TRIBUNAL JUDGE FRANCES

Between

ERMIR VELAJ
(NO ANONYMITY ORDER MADE)

Appellant

and

ENTRY CLEARANCE OFFICER

Respondent

Representation:

For the Appellant: No appearance

For the Respondent: Mr E Terrell, Senior Home Office Presenting Officer

Heard at Field House on 15 September 2023

DECISION AND REASONS

1. The appellant is a citizen of Albania born on 16 April 1990. He appeals against the decision of Designated First-tier Tribunal Judge Shaerf promulgated on 29 March 2023 dismissing his appeals against the refusal of a family permit under the EU settlement scheme ('EUSS') on the basis his marriage to a Romanian citizen, the sponsor, was one of convenience.

Grounds of appeal

2. The grounds submit the judge failed to 'engage in a balancing exercise in totality with Papajorji (EEA Spouse - marriage of convenience) Greece [2012] UKUT 00038 (IAC)' and the Entry Clearance Officer ('ECO') had failed to discharge the burden of proving the marriage was one of convenience.
3. Permission to appeal was granted by First-tier Tribunal Judge Frantzis on 9 June 2023 on the following grounds:

"It is arguable that the FtTJ has erred in his application of the burden of proof in this appeal, finding as he does at paragraph 24 that "the Appellant has not shown the ECO was not justified in concluding his marriage is one of convenience." It is at least arguable that the FtTJ has here placed a legal burden on the Appellant which, on authority, would be wrong as matter of law (Sadovska [2017] UKSC 54)."
4. The respondent submitted a rule 24 response stating:
 3. A careful reading of paragraph 20 shows that the Judge correctly described the respondent as having the burden of proving the marriage was one of convenience. Despite expressing misgivings, the judge found she had discharged that burden.
 4. It was then for the appellant to provide some sort of defence against the allegations the judge gave careful reasons for finding that the appellant did not do so.
 5. It may be significant that the sponsor did not attend the hearing because she had to attend to 'other pressing matters.' There is no explanation what these 'other pressing matters' were."

Adjournment application

5. The appellant's solicitors sent an email dated 13 September 2023 stating that they were without instructions and requesting an adjournment. The respondent opposed the application. The sponsor did not attend the hearing before the First-tier Tribunal or the Upper Tribunal. There was no reason to believe the position would be different if the hearing was adjourned to a later date. Having considered the overriding objective, I refused the application for an adjournment.
6. The appellant is outside the UK. I am satisfied that appellant has been notified of the hearing through his solicitors and conclude it is in the interests of justice to proceed in the sponsor's absence. After hearing brief submissions from Mr Terrell, I dismissed the appellant's appeal for the reasons given below.

Conclusions and reasons

7. The judge referred at [19] of his decision to the definition of 'marriage of convenience' under Appendix EU and considered relevant case law under the Immigration (EEA) Regulations 2016 before concluding that for practical purposes the relevant provisions were the same. He then went on at [20] to conclude:

"I find that having considered the evidence in the round, the ECO has just and only by a hair's breadth discharged the burden of proof or, as explained at paragraphs 18-20 of *Papajorgii*, (sic) given adequate reasons to support suspicions for believing the Appellant's marriage to be one of convenience so as to put the burden on the Appellant to show his marriage is not one of convenience."
8. The judge gave adequate reasons for coming to this conclusion at [21] to [23]. There was a lack of documentary or supporting evidence to support the

appellant's claim. The judge was entitled to rely on inconsistencies in the appellant's account and the lack of explanation for them.

9. The sponsor did not attend the hearing before the First-tier Tribunal and there was no oral evidence. The judge was entitled to find there was no explanation for the inconsistency as to when the appellant and sponsor last saw each other. The appellant's and sponsor's witness statements are in similar terms but give no explanation for this inconsistency relied on by the ECO in the notice of refusal.
10. The judge assessed the totality of the evidence independently of the ECO's assessment. The judge attached no weight to the inconsistency in relation how the appellant and sponsor met and gave adequate reasons for doing so. The judge took into account the weakness of the respondent's case and found he/she had just discharged the burden of proof. The judge considered the evidence in the round and his findings were open to him on the evidence before him.
11. It is apparent on reading the decision as a whole that the judge's conclusion at [24] was not inconsistent with his direction on the burden of proof at [20]. Accordingly, I find there was no material error of law in the decision promulgated on 29 March 2023 and I dismiss the appellant's appeal.

Notice of Decision

The appeal is dismissed

J Frances

Judge of the Upper Tribunal
Immigration and Asylum Chamber

15 September 2023