



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

Appeal Numbers: IA/18494/2014
IA/18333/2014

THE IMMIGRATION ACTS

**Heard at Glasgow
on 5 February 2015**

**Determination
Promulgated.
on 9 February 2015**

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

**VIOLETA SADOVSKA &
SALEEM MALIK**

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

For the First Appellant: Mr M D Templeton of Quinn, Martin & Langan,
Solicitors
For the Second Appellant: Mr D Brown of Drummond Miller, Solicitors
For the Respondent: Mr M Matthews, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The second appellant, a citizen of Pakistan, entered the UK as a student in April 2011. He did not study, which he says was due to a dispute with his college over fees. He overstayed. His first contact with the respondent

after arrival was by letter dated 11 April 2014 from Drummond Miller (then acting for both appellants). The letter advised that he and the first appellant, a citizen of Lithuania, had been in a relationship since February 2013, had resided together since 6 April 2014, and planned to marry on 17 April 2014. They offered to be interviewed in advance of the wedding.

2. The appellants were interviewed by Immigration Officers on 17 April 2014, following which the marriage did not proceed, and immigration decisions were made against both appellants. Judge Doyle dismissed their appeals to the First-tier Tribunal by determination promulgated on 19 August 2014.
3. The following points are common ground: the appeals turn on the Judge's finding that the proposed marriage was of the nature of a marriage of convenience; there is a distinction between living at the same address and marital, or quasi-marital, cohabitation; and if the Judge's finding on the nature of the marriage is legally unsustainable, the outcome should be a remit to the First-tier Tribunal.
4. The grounds of appeal for the first appellant are along the following lines. The Judge took the evidence of interviews of the appellants by Immigration Officers as the most important and made negative findings thereon before going to the other evidence, an approach contrary to *Papajorgi* [2012] UKUT 00038. He failed to reach his decision on the totality of the evidence and ignored various items of evidence supporting the case for the appellant, including her contention that she was interviewed without an interpreter and aggressively as a result of which she completely lost her confidence. The Judge fell into the misunderstanding that the appellant's mother lived in Edinburgh whereas she lives in Lithuania.
5. The grounds of appeal for the second appellant say that his agents had written to the respondent with a prior offer to be interviewed but the respondent nevertheless chose to interview them at the wedding when they were both highly anxious and when no interpreters were used. The Judge failed to take into account the evidence of cohabitation. He thought that the solicitors' letter was part of a grand plan to enter into a marriage of convenience, when its purposes were to make a human rights allegation to protect an "in country" right of appeal, and to avoid disruption of the marriage. There is inadequate reasoning for discounting the positive evidence of a genuine relationship. There was a failure to follow *Papajorgi* which lists criteria identifying a marriage of convenience, only one of which applied (inconsistency over personal details).
6. On 29 September 2014 First-tier Tribunal Judge McDade granted permission to appeal, thinking it "arguable that the Judge gave inappropriate weight to inconsistencies that were mainly evident during interviews in arguably stressful circumstances and without an interpreter."
7. In a Rule 24 response to the grant of permission the respondent says that the grounds are only disagreement and that the Judge came to his conclusion having considered all the evidence.

8. The appellants' representatives adopted each other's grounds and arguments. As agreed between them, Mr Brown made the first submission.
9. A supplementary inventory for the second appellant, filed for the UT hearing, contains copies of the Immigration (EEA) Regulations 2006, the EU Commission Handbook on marriages of convenience, and *Miah* [2014] UKUT 00515. The inventory continues with evidence to support the cohabitation of the appellants since the second appellant was released on bail granted by the respondent. (The first claimed period of cohabitation was from 6 to 17 April 2014, and the second from 16 June 2014 to the date of the First-tier Tribunal hearing, and continuing.)
10. Mr Brown argued as follows. The Judge fell into the same error as the decision-maker of treating the interview as the central or even as the only issue and as the starting point - paragraphs 12 (b) (c) and (d) of the determination. There had been significant evidence and submissions about deficiencies and unfairness in the interview process. The second appellant was interviewed in her third language (after Lithuanian and Polish) and the first appellant was interviewed in his second language. The Judge did not mention those matters. The interview process had been conducted in breach of common law rights of fairness, for which there was no excuse, the appellants having offered themselves for interview in advance. *Miah* at paragraphs 2, 9 and 11 emphasised the need for procedural fairness in conduct of such interviews. The terms used by the Judge at paragraph 11(d), "Immigration Officers *intercepted* both appellants" at the Registry Office, and at 12(o), "the first appellant was *found*" at the Registry Office, suggested wrongly that the appellants had been apprehended in some subterfuge. *Papajorgi* at paragraph 37 and *Miah* at paragraph 6 refer to the Handbook guidance. At section 4.2.1.2 the guidance aims at minimising the danger of considering a genuine couple as abusers. The double lock safeguard requires identification firstly of hints of no abuse. The Judge adopted "a parody of the correct approach". He considered negative factors first, the wrong way round, and gave positive factors little if any consideration. He should have taken as his starting points the evidence of cohabitation, the attendance of the appellants together at a wedding, a visit together to London, money sent by the second appellant to the first while he was in detention, and photographs showing mutual affection. In spite of submissions on the correct approach and on the positive evidence he began at the wrong end. The nearest he came to a finding on cohabitation was at 11(i) where he noted signature by both appellants of a lease on 6 April 2014 and their statement of 28 March 2014 that they had not yet acted on the idea of living together. He made an incorrect finding at 11(a), repeated at 14(c), that the appellant's mother [not just her two sisters] lives in Edinburgh. The mother's absence on 17 April 2014 from Leith Registry Office was

found to be significant at 12(o), so the point was material. He had “drunk from the poisoned well” of the interview evidence and fallen into material errors.

11. Mr Templeton said that the Judge had gone wrong in principle in his approach to the interview evidence, and also on the particulars before him. The first appellant’s statement, quoted in her grounds, stressed her terror at interview, the aggression of the interviewers, her English being not of a high standard, and the absence of an offer of an interpreter. The Judge was not bound to accept her evidence but he had to explain what he made of it. He did not deal with documentary evidence about the appellants residing at the same address, the second appellant booking a hotel for a romantic break, and effectively said nothing about cohabitation. 12(j), which says that evidence of commitment to one another was limited in time, was no more than lip service to matters which should have been the starting point but were treated as peripheral.
12. Mr Matthews pointed out that at most the appellants shared an address for only 11 days up to 17 April 2014. He accepted that the Judge fell into a factual error about the first appellant’s mother living in Edinburgh. However, the Judge was correct to note that she has two sisters there. The Judge’s point at 12(o) about the absence from the wedding of her “friends and female relatives” living in the same town remained valid after allowing for the error. No real complaint was raised about the interview of the second appellant. The Judge had not dealt expressly with the complaints of the first appellant, but any attraction in that ground was only superficial. It was not to be presumed that the Judge overlooked matters which were before him, and he did not have to mention all the evidence. What the appellant said was in substance not capable of making a difference. She has been in the UK since 2007 and worked throughout that period. Her English was good enough for that purpose and to form and carry on a relationship leading up to marriage, English being the only common language of the appellants. The interview questions were straightforward and there was nothing to suggest any linguistic difficulty in dealing with them. The records of both interviews show that the appellants were asked if they were happy to be interviewed in English and answered, “Yes”. With the letter of 11 April 2014 the appellants produced a statement from Arkan Hassan, a friend of the second appellant, who says that the two appellants met at a disco night and “instantly hit it off in conversation”. Another friend, Ajaz Qureshi, says that he saw the appellants “at ease in each others’ company, often finishing each other’s jokes” and mentions “the brisk flow of conversation between them”. The first appellant could not realistically say in light of that evidence that she was terrified and confused by simple questions in English. The appellants made much of offering to be interviewed in advance, but the notice period was very short, and the respondent does

not have teams of officers standing idly by to respond to such requests. It was only to be expected under those circumstances that the interview came to be on the day of the proposed wedding. The appellants anticipated and were prepared for that, so it came as no shock, which made the inconsistencies on obvious points even more telling. The substantive points which the first appellant seeks to address from the interview are whether she has been in Morocco once or three times, which was insignificant; which city the first appellant is from, which she accepts she did not remember; and the names of his brothers and sisters, which she accepts she did not know. There was good reason to be sceptical of her claims about the interview. Although the appellants now made much of those claims not being examined, they did not raise any point to make the appellants' case better. The Judge did not use the words "intercepted" and "found" incorrectly. That complaint was no more than a semantic quibble. There was no error of treating the evidence in the wrong order. Under the heading "findings of fact" at 11(a)-(j) the Judge set out matters which were relatively uncontentious, broadly tending to favour the appellants. Under the heading "conclusions" at 12(a)-(r) he analysed the rest of the evidence, logically starting with the interviews. While those were at the heart of the case, the Judge expressed other concerns, such as the absence of witnesses from the hearing and of guests from the wedding. The Judge did not expressly mention that the appellants shared an address from June 2014 but that does not necessarily mean a genuine relationship. The one factual error exposed was immaterial. The other grounds had no underlying substance.

13. The response for the appellants was that the Presenting Officer's analysis of the evidence could not make up for the Judge having overlooked it, and it should not be assumed that the Judge must have reached similar conclusions.
14. I reserved my determination.
15. In *Papajorgi* an ECO thought that a marriage of 14 years and of which there were two children with everyone living in a common household was one of convenience. The case turned on information provided on an application form, not at interview. What it establishes is that the question for a Judge is "... in the light of the totality of information before me, including the assessment of the claimant's answers and any information provided, am I satisfied that it is more probable than not that this is a marriage of convenience?" (paragraph 39).
16. The Judge here did not say anything about the conduct of the interviews, and it is correct that a determination should not be upheld by reasons lacking from it. However, it is also right that a determination should not be overturned because it is silent on a point which on examination is an empty one. *Miah* emphasises the need for procedural fairness. There is nothing in that case or in the information about the interviews in this case which shows any unfairness to either appellant which ought to have been taken into account in assessing their contents. The letter of 11 April 2014

is carefully constructed on the instructions of the appellants. They offer to be interviewed and do not request interpreters. They agreed to be interviewed in English on 17 April 2014. The Immigration Officers had no reason to doubt the appellants' willingness and capacity to undertake such interviews.

17. The appellants later protest noisily, but they do not show that even if something did go wrong about their interviews there is anything they might have offered to make their case significantly better.
18. This aspect of the grounds seeks to put an artificial distance between the appellants and the failure of their case to stand up to straightforward examination.
19. The error about where the first appellant's mother lives is immaterial. The Judge's point is not much diminished by removing her and considering only the absence of friends and two sisters.
20. The case for the appellants has been put as strenuously as it could be, both in the First-tier Tribunal and in the Upper Tribunal. However, I think that the criticisms of the Judge fall short of their mark. Read fairly and as a whole, the determination sets out the points broadly in favour of the appellants at paragraph 11 before turning to analyse the contentious issues at paragraph 12. That passage could not sensibly start anywhere else than with the interviews. The sub-headings "findings of fact" and "conclusions" are inaccurate, but it is the content which matters. The overall analysis is in line with *Papajorgi*.
21. The appellants have not shown any such error of law as to entitle or require the Upper Tribunal to interfere with the determination of the First-tier Tribunal, so it shall stand.
22. No anonymity direction has been requested or made.



6 February 2015
Upper Tribunal Judge Macleman