



IAC-FH-AR-V1

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

Appeal Number: IA/37531/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 5 November 2015**

**Decision & Reasons Promulgated
On 19 November 2015**

Before

**MR JUSTICE PHILLIPS
UPPER TRIBUNAL JUDGE WARR**

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**ANWAR UL HAQ
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the appellant: Mr P. Naith, Home Office Presenting Officer

For the respondent: No appearance

DECISION AND REASONS

1. This is an appeal by the Secretary of State, with permission, against a decision of First-tier Tribunal Judge Higgins, promulgated on 4 June 2015, allowing the respondent's appeal against a decision of the Secretary of State to refuse to grant the respondent, a national of Pakistan married to a Polish national, an EEA residence card. The Secretary of State's decision was based on her determination that, although the respondent had married an EEA national, Miss Siderowicz, on 11 May 2014, that marriage was not genuine but was one of convenience.

2. The Secretary of State formed that view on the basis of an inspection visit by the West London Arrest Team to what was understood to be the marital home at 6 [-]. Although the report of the visit states that it took place on 31 August 2014, it is common ground that the true date was 1 August 2014. On that date the Immigration Officers were admitted into the property by a Mr Daryana. The report records that Mr Daryana told them (i) that the appellant and his brother had lived there for about a year, but that they had moved out the previous evening and (ii) that two female Romanians had visited about three times a week, but did not reside there.
4. The appellant appealed that decision. He submitted with his notice of appeal witness statements made by Miss Siderowicz and Mr Daryana and a letter from the appellant's former landlord at 6 [-], a Mr Haralambous. He also relied on a tenancy agreement evidencing that the appellant and Miss Siderowicz had been tenants of their new property since 30 July 2014, together with copies of bank statements evidencing that they have both resided at that new address since at least September 2014.
5. The statements from Miss Siderowicz and Mr Daryana contradicted the report of the Immigration Officers' visit. In particular, Mr Daryana stated that his conversation with them on 1 August 2014 had been misreported. He said that he had been asked if any females live in the house. He had said yes. He could hear them sometimes talking at night, about three or four times a week. He had not said they came to the property three to four times a week. He had been asked if he knew where the females were from and he had said Eastern Europe. He had not been sure if they were Romanian, Polish or Ukrainian – he had not said they were Romanian. He told the Immigration Officers the respondent and his wife and brother had moved to another property the previous night.
6. Mr Haralambous said in a letter that the respondent had been his tenant at 6 [-], until his tenancy agreement had expired on 30 June 2014. He confirmed that Miss Siderowicz had lived with the appellant since September 2013.
7. At the hearing of the appeal on 22 April of this year neither the appellant nor the respondent were present or represented. Judge Higgins was satisfied that the respondent had been given proper notice of the hearing and, having regard to the overriding objective, he considered it was in the interests of justice to proceed with the hearing in the absence of both parties. He reminded himself of the Upper Tribunal's decision in **Papajorgji (EEA spouse - marriage of convenience) Greece [2012] UKUT 00038 (IAC)** which provides that there is no obligation on an applicant to demonstrate his marriage to an EEA national is not a marriage of convenience when he makes his application. If, however, the Secretary of State puts forward reasonable grounds for suspecting that the marriage was entered into for the predominant purpose of securing a right of residence, there is an evidential burden on the applicant to address those suspicions. Judge Higgins stated that the question he had to determine was whether he was satisfied, in the light of the totality of the evidence

and information before him, that it was more probable than not that this was a marriage of convenience.

8. His answer to that question was “no”. He considered the evidence before him and concluded that he was not satisfied that the respondent’s marriage was, more likely than, not a marriage of convenience.
9. On this appeal the Secretary of State contends that the judge’ decision contained errors of law. The first error suggested by Mr Naith, who appeared for the Secretary of State (the respondent not appearing and not being represented), is that it was wrong in principle not to adjourn the hearing in circumstances where the parties had not appeared and there were disputed facts in issue. We do not accept that contention. The question of whether to grant an adjournment is a matter of discretion and it cannot be said that, in circumstances where neither party had attended and neither party had requested an adjournment, that it was wrong for the judge to have continued with the hearing. We doubt whether the Secretary of State would have complained that the matter was not adjourned if the decision had been in her favour. It is certainly not the case that a Tribunal judge must adjourn a hearing before determining on the evidence that the case should be decided against the Secretary of State.
10. Mr Naith’s second contention was that the judge erred in law by finding against the Secretary of State in circumstances where the evidence put forward by the respondent had not been tested. Again, we see no merit in that contention. The evidence before the judge was admissible and he was entitled and obliged to determine the matter on the basis of his assessment of that evidence if he did not otherwise adjourn the case. The reason why evidence was not tested was because the Secretary of State did not appear to test it. Had the Secretary of State attended and argued that she had not been able to test the evidence because the respondent had not appeared, the matter might have been determined differently. But in the event the judge assessed the evidence before him as he was bound to do and we can see no error in his approach, nor in his decision.

Notice of Decision

11. In those circumstances this appeal is dismissed.
12. No anonymity direction is made.

Signed

Date 18 November 2015

Mr Justice Phillips

TO THE RESPONDENT

FEE AWARD

The fee award made by the First-tier Judge stands.

Signed

Date 18 November 2015

Mr Justice Phillips