



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

Appeal Number: IA/42049/2014

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 3 November 2015**

**Decision & Reasons Promulgated  
On 6 November 2015**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE A M BLACK**

**Between**

**MR MOURAD TAALBI  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr Nicholson, Counsel, instructed by BMAP

For the Respondent: Mr S Kotas, Senior Home Office Presenting Officer.

**DECISION AND REASONS**

1. The appellant is a citizen of Algeria who appealed against the respondent's decision to refuse him a residence card as confirmation of a right of residence under the EEA Regulations. His appeal against that refusal was dismissed by Judge of the First-tier Tribunal Colvin ("the FTTJ") in a decision promulgated on 29 May 2015.
2. No anonymity direction has been requested and none is required.

3. Permission to appeal was granted by First-tier Tribunal Judge P J M Hollingworth on 20 August 2015 on the grounds that it was arguable the FTTJ had adopted the wrong approach “by not simply asking the question whether reasonable suspicion was raised” as to whether the Appellant’s marriage was one of convenience. He also considered that this led to doubt about the FTTJ’s reference to being satisfied on the balance of probabilities that this was a marriage of convenience. Thus the appeal has come before me.

### **Submissions**

4. Mr Nicholson, for the appellant, relied on his detailed written grounds and, in addition, made lengthy further submissions. The principal issue was that the evidence adduced by the respondent was not sufficient to discharge the burden of raising a suspicion of a marriage of convenience. It did not demonstrate fraudulent behaviour by the appellant and his wife. Furthermore, the FTTJ had found there was a marriage of convenience on the balance of probabilities (her paragraph 40). In **Papajorgji (EEA spouse - marriage of convenience) Greece [2012] UKUT 00038 (IAC)** the respondent had failed to issue a family permit; in this case she had not issued a residence card; for this reason, the burden on the respondent was higher in the present case. The requirements at paragraph 37 of **Papajorgji** had not been met and the FTTJ had not been obliged to go on to consider the totality of the evidence. In addition, the FTTJ had drawn unreasonable inferences from the evidence. She had noted inconsistencies but failed to take into account consistencies in the evidence.
5. Mr Nicholson further submitted that there had not been a fair hearing: it was inappropriate for the witnesses to be asked questions about the sincerity of their relationship without warning of the issues which would be addressed through oral examination. The respondent had not invited the parties to interview first.
6. Furthermore, Mr Nicholson noted the FTTJ had referred in paragraph 25 to the burden of proof resting on the appellant and that it was for him to show on a balance of probabilities that he met the requirements of the Immigration Rules [sic].
7. For the respondent, Mr Kotas submitted that the appellant merely disagreed with the FTTJ’s findings. However they were open to her. He said it was likely that the witnesses’ evidence would be consistent to some extent because they were seeking to persuade the FTTJ their marriage was genuine. In such circumstances it was appropriate for the FTTJ to give those less weight. There had been no need to call the parties for interview because the nature of the marriage was not the only reason for refusal. The respondent’s evidence had been sufficient to raise a suspicion of a marriage of convenience. It was also disputed that the appellant should have been put on notice of oral examination to which he might be subjected: the appellant and his wife could have been in no doubt about

the issues in dispute; they were legally represented and had been tendered for cross-examination. The decision was reasoned and followed the guidance in **Papajorgji**. The FTTJ had accepted there were flaws in the evidence of suspicion. It would have been inappropriate for the FTTJ to ignore the inconsistencies in the oral evidence of the witnesses.

## **Discussion**

8. Whilst the FTTJ has referred in paragraph 25 to the burden of proof being on the appellant to show on the balance of probabilities that he met the requirements of the immigration rules [sic], the FTTJ had gone on to say that, where the respondent made an allegation that the marriage was one of convenience, the appropriate guidance was in **Papajorgji** (her paragraph 26). Thus whilst the FTTJ had incorrectly referred both to the burden being on the appellant and to the Immigration Rules, she had cited correctly the guidance in **Papajorgji** and referred to the initial burden being on the respondent. Furthermore, it is clear from her decision that she initially considered the evidence of the respondent on the issue of suspicion. Thus her error in referring in paragraph 25 to the immigration rules and to the burden being on the appellant is not a material one, albeit it is incorrect.
9. The FTTJ set out the headnote of **Papajorgji** in full before making her findings. She noted that the issue had been raised as to whether the respondent had fulfilled the evidential burden by providing sufficient reason to suspect that this marriage is one of convenience so as to be in accordance with the decision in the case of **Papajorgji**. She noted that there was no evidential burden on the appellant until the respondent had raised the issue of suspicion of a marriage of convenience “by putting forward evidence”. Thus, the FTTJ identified the correct approach to making her decision.
10. The FTTJ then went on to consider the evidence adduced by the respondent to support her suspicion as to the marriage. She noted, not only the Immigration Officer’s (IO’s) report on his visit to the appellant’s claimed home but also his immigration history, namely his entry to the UK with a wife and child in 2010. She took particular account of the content of the IO’s report insofar as it detailed the exchange between the IO and the male who answered the door at the appellant’s and his wife’s claimed address. It is notable that the FTTJ did not cite the remaining part of the statement which contained the IO’s opinion as to the appropriate decision on the application but confined her consideration to his report of events witnessed first hand at the property. She states that she “accept[s] that just considering the evidence on the papers this could in principle be sufficient reason to raise the suspicion which meant that it would then be upon the appellant to produce evidence to address the suspicion”. This is followed by: “And indeed this is what happened in this case on appeal before me”. Whilst her reasoning could be better phrased, taking the paragraph as a whole it is implicit that she accepted that the report of the IO, without more, was sufficient to raise a suspicion of a marriage of

convenience. It is also implicit from her finding that the content of the report was sufficient to raise a suspicion of false representations as to the nature of the appellant's and his wife's relationship and, particularly, that they did not live together at the property. In making her finding, the FTTJ took into account the submissions of the appellant's counsel as regards the quality of the evidence adduced by the respondent (paragraph 27). For these reasons, I am unable to find that the FTTJ's reasoning on the issue is inadequate or that she has failed to take relevant factors into account. Her decision was open to her on the evidence, albeit flawed. Her decision and reasons accord with the guidance in **Papagorjgi** and **IS (marriages of convenience) Serbia [2008] UKAIT 00031**).

11. Having made that finding appropriately the FTTJ correctly went on to analyse the evidence of the appellant on the issue of whether the marriage was one of convenience. She noted in paragraph 30 that the appellant had produced evidence to undermine the reliability of the IO's report. She took into account not only the appellant's evidence as regards the layout of the building which was visited by the IO (paragraph 30) but also the remaining evidence as a whole, including the appellant's own and his wife's oral evidence.
12. I do not accept the submission for the appellant that he should have been put on notice of issues which would be addressed in oral examination. The appellant was fully aware that the respondent challenged the genuineness of his relationship with his wife. He could have expected to be examined on its authenticity. Indeed if he and his wife had been in a position to give consistent answers in oral examination, they would have had nothing to fear from such examination as to the "sincerity" of their relationship (to use Mr Nicholson's word in submissions to me). The respondent cannot be criticised for having failed to conduct an interview before the hearing in circumstances where there were other reasons for refusal (albeit those grounds were subsequently conceded at the hearing as a result of additional disclosure by the appellant).
13. The FTTJ set out at length various concerns arising from the evidence of the parties. It would be surprising if there were not also consistencies given that the witnesses were attempting to persuade the FTTJ that they were in a genuine relationship. However, the FTTJ was entitled to give weight to the inconsistencies in their evidence because they were particularly relevant to the issue in dispute.
14. Taking the evidence and the decision as a whole, the FTTJ's findings were open to her on that evidence and she has given adequate reasons for her findings. I find no fault in the phrase used in paragraph 40 of the decision, mirroring as it does the terminology in paragraph 39 of **Papajorgji**.
15. For these reasons, there is no error of law in the FTTJ's decision and reasons.

## **Decision**

16. The making of the decision of the First-tier Tribunal did not involve the making of a material error on a point of law.

17. I do not set aside the decision.

Signed

Date

Deputy Upper Tribunal Judge A M Black