



**Upper Tribunal
(Immigration and Asylum Chamber)
IA/12375/2015**

Appeal Number:

THE IMMIGRATION ACTS

Heard at: Field House

**Decision and Reasons
Promulgated
On: 20th July 2016**

On: 4th July 2016

Before

UPPER TRIBUNAL JUDGE BRUCE

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

And

**YACINE CHAMI
(NO ANONYMITY DIRECTION MADE)**

Respondent

Representation:

For the Appellant: Mr N. Bramble, Senior Home Office Presenting Officer
For the Respondent: M C. Lam, David Tang & co

DETERMINATION AND REASONS

1. The Respondent is a national of Algeria born on the 26th January 1978. On the 9th December 2015 Judge Wyman of the First-tier Tribunal allowed his appeal with reference to the Immigration (European Economic Area) Regulations 2006. The Secretary of State now has permission to appeal against that decision¹.
2. The matter in issue in the appeal before the First-tier Tribunal was whether Mr Chami's marriage to Hungarian national Szilvia Pecsek

¹ Permission granted on the 13th May 2016 by First-tier Tribunal Judge PJM Hollingworth

was one of convenience, entered into for the purpose of circumventing immigration control. By way of letter dated 19th March 2015 the Secretary of State had refused to grant Mr Chami any confirmation of a right of residence in the UK because she believed the marriage was a sham. Mr Chami and his wife had been interviewed at length, and the Secretary of State found that the answers given had disclosed a “litany of discrepancies” such as to establish that they were not a genuine couple. The letter identified those discrepancies, which included matters such as where the couple had spent New Year’s Eve 2014, when marriage had been proposed and the sum paid to Ms Pecsek as her dowry as part of the Islamic marriage contract.

3. On appeal before the First-tier Tribunal both Mr Chami and Ms Pecsek gave oral evidence. They were each cross examined by a Home Office Presenting Officer and were then asked some questions by the Judge. The answers given are summarised in the determination. At paragraph 49 the Judge records that he has carefully considered the documentary and oral evidence. The Tribunal directs itself to the guidance in Papajorgi (EEA Spouse - marriage of convenience) Greece [2012] UKUT 00038. The determination records Mr Chami’s acceptance that some of the answers given were discrepant. The Tribunal describes some of these discrepancies as being “relatively minor” whereas “others may have more weight”. The Tribunal finds that the “vast majority” of the answers given were “correct”. The determination then says this:

“55. I asked the appellant and his wife various questions, which they could have had no prior knowledge of. This included what is their favourite food, what hours do they work, what is their day off and what do they like to do together. The answers were completely consistent.

56. I also accept the fact that the appellant’s wife had chosen to convert to Islam before she came to the United Kingdom and before she met Mr Chami. She appeared very sincere in her answers in this regard.

57. Had the couple not been living together, I do not believe that they would have been able to “simply learn” the correct answers to the numerous questions that were asked at the interview and at the appeal hearing. Some of the answers that were initially seen as incorrect at the lengthy marriage interview were explained later by the appellant and his wife. One example of this is asking what happened on New Year’s Eve. Mr Chami has explained that he was working on New Year’s Eve and therefore got back late. However they did celebrate together after he returned from work. Accordingly I accept there is no inconsistency in this answer”.

4. The appeal was thereby allowed.

5. The Secretary of State now appeals on the ground that the First-tier Tribunal has not given sufficient reasons for its conclusions, and that it has failed to resolve matters of dispute between the parties. The grounds reproduce the various points made in the reasons for refusal letter, and submit that the determination has not adequately addressed these matters.

The Submissions

6. The grounds set out verbatim the eight discrepancies, identified in the refusal letter, which arose from the interviews conducted with Mr Chami and his wife. Although the determination makes express reference to one of these matters, it is submitted that the Secretary of State cannot know the Tribunal's conclusions as to the rest of them, since any such conclusion is not articulated. Although the grounds are fairly detailed, in his submissions Mr Bramble distilled them to make one central point: the Secretary of State went into this appeal believing that she had shown very good grounds as to why this was a sham marriage, and has come out not understanding why she lost. Mr Bramble pointed to the Tribunal's acknowledgement that some of the points made had "more weight" and questioned where those matters were weighed in the balance. The fact that the couple lived together (ie in the same house) was not actually in issue so the comment at 57 was troubling and appeared to indicate that the tribunal had misunderstood the test to be applied.
7. Mr Lam made a robust defence of the determination. He pointed out that the couple had, between them, answered in excess of 1500 questions in two very long interviews which had only been served very shortly before the hearing. The eight discrepant answers had to be viewed in that context, and indeed that is exactly what the Tribunal had done. There was no need for the determination to have set out chapter and verse of the refusal letter, because it was apparent to all what the case was about. There was one central issue: was this a sham marriage. The determination demonstrates that in answering that question the Tribunal had applied the correct burden and standard of proof (in line with Papajorgi) and had taken all relevant information into account. The two witnesses had appeared before Judge Wyman and he had had an opportunity to assess the credibility of the witnesses for himself. Questions had been put that the couple could not have been prepared for had this been a sham. Their evidence had included lengthy witness statements in which each and every one of the points made was addressed.

My Findings

8. The questions raised in this appeal are whether the Tribunal properly weighed in the balance the case for the Secretary of State and

whether sufficient reasons were given for rejecting that case.

9. I am satisfied that the Tribunal was fully cognisant of the case for the Secretary of State. At paragraph 9 the determination notes the point that there was a “litany of discrepancies” relating to matters such as the parties religion, respective immigration history and the proposal of marriage. The determination then records that the witnesses had adopted their witness statements, wherein they address the points made in the refusal letter in detail. It is quite apparent that the Tribunal understood why the case was before it.
10. The real question is whether the decision gives sufficient reasons as to why the Tribunal found in the (then) appellant’s favour. The complaint is that the determination does not go through each of the discrepancies methodically before reaching an overall conclusion. The answer, in my view, lies in the passage from Papajorgi cited at paragraph 52 of the determination:

“In summary, our understanding is that, where the issue is raised in an appeal, the question before the Judge will therefore be *‘in light of the totality of the 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?’*”

[emphasis added].

11. The Tribunal could not have ignored the points raised by the Secretary of State since they were at the centre of the appeal. Those eight discrepant answers were however assessed in the round with all of the other evidence. That included the other 1500+ answers given which were consistent, and the oral evidence, tested by an experienced Presenting Officer. It included the fact that the couple answered additional questions put to them by the Tribunal to its satisfaction, and that there were two additional witnesses who testified to the fact that this couple, known to them personally, presented as perfectly genuine. Taking all of that evidence together, the Tribunal was entitled to find the burden had not been discharged. I am satisfied that there was no error in describing some of the discrepancies as “relatively minor”; that appears to have been the language used by the Presenting Officer in her submissions [at 43].
12. In Papajorgi, and indeed Rosa v SSHD [2016] EWCA Civ 14, it was held that the legal burden of proving a marriage to be one of convenience lies on the Secretary of State. In this case the Secretary of State relied on a select number of points arising from what were extremely long and detailed interviews. In the case of Ms Pecsec, the interview was conducted using an interpreter over the telephone, hardly an ideal situation. She had given evidence that this had led her to become confused about what she was being asked, and this

evidence was accepted by the Tribunal. The result was that the burden was not found to be discharged. There was no error of law in that finding.

Decisions

13. The determination of the First-tier Tribunal contains no error of law and it is upheld.
14. I was not asked to make an anonymity direction and on the facts I see no reason to do so.

Upper Tribunal Judge Bruce
18th July

2016