



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

Appeal Number: IA/14926/2014

THE IMMIGRATION ACTS

**Heard at Bennett House, Stoke on Trent
On 24th May 2016**

On 26th July 2016

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

**MR UCHENNA ONWUSAKAH
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Simon Harding (Counsel)
For the Respondent: Mr Andy McVeety (HOPO)

DECISION AND REASONS

1. This is an appeal against the determination of First-tier Tribunal Judge Coffey promulgated 30th July 2015, following a hearing at Hatton Cross on 20th May 2015. In the determination, the judge dismissed the appeal of Uchenna Onwusakah, whereupon the latter applied, and was granted,

permission to appeal to the Upper Tribunal, and thus the matter comes before me.

The Appellant

2. The Appellant is male, a citizen of Nigeria, who was born on 12th May 1974. He appeals against the decision of the Respondent Secretary of State, dated 17th April 2013, refusing his application for a residence card as the spouse of a non-EEA citizen, namely, Mrs Ivana Paiskova, a citizen of Bulgaria, who is exercising treaty rights in the UK.

The Appellant's Claim

3. The Appellant's claim is that his marriage is a marriage that meets with the EEA Regulations under Regulations 2(1) and Regulation 17(1) of the Immigration (European Economic Area) Regulations 2006.

The Judge's Findings

4. The judge had regard to the relevant history of the Appellant which is set out in the refusal letter as well, and this confirms that as long ago as 10th February 2009, the Appellant's application for leave to remain in the UK under the Tier 1 Highly Skilled (Post-Study) programme was refused. He was issued with a refusal notice. He then claimed asylum in September 2009 on the basis that he was a homosexual. On 19th January 2012, he married Ivana Paiskova in Manchester. On 17th April 2013 his application for a residence card was refused. On 23rd January 2013 he was sentenced to sixteen weeks' imprisonment by Manchester Magistrates' Court for possessing a licence with intent to deceive. On 15th June 2013 he submitted an application for a residence card as a non-EEA family member of a Bulgarian or Romanian national who is exercising treaty rights in the UK. For this reason, the Appellant was invited for an interview together with his EEA national wife. However, the interview answers shows a large number of discrepancies which are set out (see page 3 of 6 of refusal letter).
5. The judge had regard to the Appellant's core submission that he was not involved in a marriage of convenience and that the requirements of the Regulations had been met. They now had a son together (see paragraph 12).
6. Nevertheless, the judge went on to hold that there were "*numerous material differences*" between the Appellant and the Sponsor's evidence" (see paragraph 25). For example, the Appellant stated that the Sponsor suffered from cancer and had surgery to remove a cancerous lump. But the Sponsor stated that she had not suffered from cancer. The account given by the parties of their wedding day was materially different. The account that they gave of the frequency with which the Appellant saw his son, David, was different (see paragraph 25). The judge went on to say that the Appellant was not able to produce any photographs of his baby

son at the hospital on its own despite stating that he had them with him at the hearing. The Sponsor was invited to show pictures following the birth (the Appellant having stated that they must have been taken on her phone) but she said that they had not been taken on the phones. The judge held that, *"I was not given any such photographs to consider"* (paragraph 28). Furthermore, the judge recorded how *"the Appellant could not recall what the Sponsor was doing the previous Friday"* (paragraph 30).

7. In his conclusions, the judge went on to say that, *"I accept there is plenty documentary evidence of cohabitation"* but deduced from this that, *"I regret the Appellant is creating a facade of cohabitation in order to succeed in his application"* (paragraph 34). Furthermore, the judge held that, *"I find it material that the Sponsor did not visit the Appellant during his three month prison sentence and at interview did not know the correct length of the sentence"* (paragraph 36). For the sake of completeness, the judge went on to conclude that, *"of course the Appellant states that his baby son is evidence of a genuine marriage"* but that, *"I have not seen the birth certificate but there is a copy with the Home Office and there is nothing to suggest the Appellant is not named on this as the father"*. Nevertheless, the judge concluded that, *"this alone is not proof of parentage and even if the Appellant is the father, this is not conclusive proof that the marriage is genuine"* (paragraph 37). Finally, the judge ended with the observation that the Appellant had stated that he was a homosexual in his asylum claim *"but there is no mention of this in the current application"* (paragraph 38). The appeal was dismissed in the light of the fact that, *"This Appellant has a history of seeking to use available avenues in order to secure his immigration status in the United Kingdom"* (paragraph 39).
8. The appeal was dismissed.

Grounds of Application

9. The grounds of application state that there was evidence of cohabitation of nearly four years and there was now a child and the judge had failed to heed the decision in **Papajorgji [2012] UKUT 00038**, which was to the effect that, *"A marriage of convenience in this context is a marriage contracted for the sole or decisive purpose of gaining admission to the host State"*. Given the period of cohabitation and the birth of the child this could not now be said to be the case here.
10. On 5th January 2016, permission to appeal was granted.

Submissions

11. At the hearing before me on 24th May 2016, Mr Harding, in careful and measured submissions before me, stated that the judge should have attached more weight to the fact that there was a child of the marriage and that there was a lengthy period of cohabitation. He said, the judge

gave too much weight to discrepancies. The latter was relevant to the assessment of a “*genuine*” marriage, which is undertaken when the Immigration Rules are in contemplation. It is not the core issue when regard is had to whether the marriage in question is a “*marriage of convenience*” because one could have a luckless and joyless marriage, but still have a marriage which was not a marriage of convenience.

12. For his part, Mr McVeety submitted that the judge was not oblivious to these matters. A large number of questions were asked of the Appellant and the Sponsor and the judge concluded that the discrepancies were such that this could not be anything other than a marriage of convenience. The judge had focussed on the issue of “*marriage of convenience*” as being the relevant question for her to determine. Moreover, the essential question was the weight that the judge should give to the facts before her. That was something that the judge had correctly undertaken as her task and no criticism could be made of her.
13. Finally, although there may be now a child, the Rules require a focus on how the marriage is entered into and for what purposes. It may later break down or it may later flourish. That was not the question. The question was how it was entered into. The judge, considering all the facts, and in particular the appalling history of the Appellant whereby he was actually determined to remain here by hook or crook, was something that the judge attached considerable weight to. She was entitled to do so.
14. In reply, Mr Harding submitted that whereas it was right that the judge should decide for herself what weight to give the evidence before her, the weight should be given to the correct concept in play. The concept here was that of a “*marriage of convenience*” and not that of a “*genuine and subsisting marriage*” under the Immigration Rules. The Grounds of Appeal had referred to the case of **Papajorgji** but the judge made no reference to this and what this case stated was that a “*marriage of convenience*” was one simply entered into for the purposes of immigration. This could not now be said given that there was child and a period of cohabitation, whereby the parties were still living together as man and wife.

No Error of Law

15. I am satisfied that the making of the decision by the judge does not involve the making of an error on a point of law (see Section 12(1) of TCE 2007) such that I should set aside the decision. My reasons are as follows. Despite Mr Harding’s attractive submissions and attempts to persuade me otherwise, I cannot say that the judge, looking at the determination as a whole and in the round, fell into an error of law.
16. The judge did not have regard to irrelevant considerations. She did not overlook any relevant considerations. Although, she ends with the observation that “*this Appellant has a history of seeking to use available avenues in order to secure his immigration status*” she went on to say that, “*I conclude that, notwithstanding the Sponsor having given birth to a*

son, there is clear evidence in this case that this marriage is a 'marriage of convenience' for the purposes of the Regulations" (paragraph 39).

17. The judge came to this conclusion on the basis of the very protracted and extensive methods employed by this Appellant to remain in the United Kingdom in whichever way he could.
18. The birth of the child, consequent upon a period of cohabitation, could just as easily have been regarded by the judge as emanating from a "*marriage of convenience*", as the marriage in question itself - which the judge had concluded was a marriage for the purposes of immigration settlement.
19. Second, it was not just the immigration record of the Appellant, that troubled the judge. What was strikingly obvious before the judge, was the enormous discrepancies in the answers given by the Appellant and his sponsoring partner. These are set out by the judge under the heading "Marriage Interview Record Form", and they range all the way from the account that the parties gave of their wedding day, to the frequency with which the Appellant sees his son, David, and to whether the Sponsor suffered from cancer or did not suffer from cancer.
20. Significantly, at paragraph 30, the judge refers to recent events, such as what the Sponsor was doing the previous Friday, and the fact that the Appellant could not recall his partner's mobile telephone number.
21. In short, the judge did ask herself the right question and did ascribe the right weight to the evidence before her as she saw fit. She did not have regard to any irrelevant matter all relevant circumstances taken into account.

Notice of Decision

22. There is no material error of law in the Immigration Judge's decision and the determination shall stand.
23. No anonymity direction is made.

Signed

Date

Deputy Upper Tribunal Judge Juss

23rd July 2016

