



**Upper Tribunal  
(Immigration and Asylum Chamber)  
IA/09715/2015**

**Appeal Number:**

**THE IMMIGRATION ACTS**

**Heard at Field House**

**Decision & Reasons**

**On 6<sup>th</sup> June 2017**

**Promulgated**

**On 15<sup>th</sup> June 2017**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE GRIMES**

**Between**

**MUHAMMAD UMAR SAEED  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr D Balroop, Counsel instructed by Rainbow Solicitors  
For the Respondent: Mr E Tufan, Home Office Presenting Officer

**DECISION AND REASONS**

1. The Appellant, a national of Pakistan, appealed to the First-tier Tribunal against the decision of the Secretary of State dated 22<sup>nd</sup> February 2015 refusing to issue him with a residence card as confirmation of a right of residence in the UK as the spouse of an EEA national exercising treaty rights. The Appellant's appeal was dismissed by First-tier Tribunal Judge Andonian in a decision promulgated on 15<sup>th</sup> February 2016. The Appellant now appeals with permission to this Tribunal.

2. The background to this appeal is that the Appellant was granted leave to remain in the UK as a student in June 2013. On 22<sup>nd</sup> January 2014 he applied for a residence card as the spouse of a Lithuanian national, Liveta Tamasauskaite (the Sponsor), claiming to be exercising treaty rights in the UK under the Immigration (EEA) Regulations 2006 (the 2006 Regulations). In a decision dated 27<sup>th</sup> February 2015 the Secretary of State stated that immigration officials had undertaken a visit to the Appellant's home address at 46 Arbour House on 14<sup>th</sup> February 2015. The report said that a male who said that he had lived at the property for one year initially stated that he did not know the Appellant's name but then said that there had been a man who lived there called Umar, as this is the Appellant's middle name the man was shown a photograph of the Appellant and he confirmed that the Appellant had lived at the property until about eight months previously and that he had lived there alone. On the basis of this evidence the Secretary of State concluded that the marriage undertaken between the Appellant and the Sponsor is one of convenience for the sole purpose of the Appellant remaining in the UK. The Secretary of State therefore refused to issue the confirmation that the Appellant sought with reference to Regulation 2 of the 2006 Regulations.
3. The Appellant appealed against that decision. In his decision First-tier Tribunal Judge Andonian considered the report from the Immigration Officer's visit noting that the report submitted had not been signed and that there was no indication as to who had prepared it. Nevertheless the judge accepted that it was reasonable to conclude that it is a report from the Respondent [5]. The judge set out the contents of the report noting also that the statement said to have been signed by the man who was in the property was not before the Tribunal. The judge also took into account that there was no explanation given by the Appellant or his representative as to why the person who told the Immigration Officer that the Appellant was not at the property and had not been there for eight months would have said that if it were not true. The judge considered the oral evidence from the Appellant and the Sponsor noting discrepancies between their oral evidence in relation to a number of issues. The judge also noted that the Appellant's landlord gave evidence explaining that the Appellant and the Sponsor had changed address to another property owned by him. The judge concluded that the couple were inconsistent about their respective personal details in many areas which "does not give the impression of a couple living together in a genuine relationship as a married couple" [11]. The judge concluded that the Secretary of State had discharged the burden of proof to show that this was a marriage of convenience and, as there was in this case reasonable grounds for suspecting that it was a marriage of convenience, the evidential burden had shifted to the Appellant to rebut that evidence and the Appellant was unable to do so [11].
4. Permission to appeal was refused by the First-tier Tribunal. In the renewed grounds to the Upper Tribunal it is contended on behalf of the Appellant that the evidence produced by the Secretary of State was not sufficient to discharge the evidential burden upon the Secretary of State as set out in

the case of **Papajorgji [EEA spouse - marriage of convenience) Greece [2012] UKUT 00038 (IAC)**. It is further contended that the Appellant's documentary and oral evidence as well as the documentary and oral evidence from the landlord's managing agent amounted to cogent evidence that this is a genuine marriage. It is contended that the judge failed to give adequate reasons and had failed to make adequate findings on all of the evidence before him. Reliance is placed on the decision in **MK (duty to give reasons) Pakistan [2013] UKUT 641**. Upper Tribunal Judge Bruce granted permission to appeal on the basis that it is arguable that the decision contains deficient reasoning particularly in respect of whether the Respondent had discharged the evidential burden upon her.

5. At the hearing before me Mr Balroop submitted that the core issue is the report from the Immigration Officer which is dealt with at paragraph 5 of the First-tier Tribunal Judge's decision. He submitted that the judge erred in giving full weight to this report in light of the deficiencies in the document. He submitted that the Appellant and the Sponsor had provided cogent evidence which the judge had failed to balance and had failed to consider the documentary evidence. He submitted that, as well as some inconsistencies, there were consistencies between the oral evidence given by the Appellant and the Sponsor and the judge had erred in localising this evidence rather than looking at the evidence in the round. Mr Balroop relied on the case of **Collins Agho v Secretary of State for the Home Department [2015] EWCA Civ 1198**. He submitted that the judge had failed to address the issues raised at paragraph 4 of the grounds about the Immigration Officer's report. He submitted that the judge failed to engage with the substantial documentation before him.
6. In response Mr Tufan relied on the decision in the case of **Rosa v Secretary of State for the Home Department [2016] EWCAS Civ 15** which he said was decided subsequently to that in **Agho**. He relied on paragraph 16 which cites the decision of the Tribunal in **Papajorgji**. Mr Tufan submitted that it is for the Appellant to address the suspicions once the evidence has been raised by the Respondent and that this is what happened here. He accepted that the Immigration Officer's report could be criticised but it was on official paper and had been prepared by an official acting for the Secretary of State. He submitted that it is clear that the Immigration Judge found that the initial burden had been discharged by production of this evidence. He submitted that there are serious issues raised in that report which needed to be addressed by the Appellant. In his submission the judge looked at all of the evidence in addressing these issues. He submitted that the crucial paragraph in the judge's decision was paragraph 10 where the judge highlighted a number of discrepancies in the oral evidence. The judge therefore has given reasons for his conclusions and in his submission in order to challenge those reasons the Appellant would need to show that they were irrational but he had failed to meet that very high threshold.

7. In response Mr Balroop submitted that the Immigration Officer's report does not give enough detail to discharge the burden upon the Secretary of State. It was not clear how long the Immigration Officers had stayed when they conducted the visit. It appeared that the Immigration Officers had only asked about the Appellant and not about the Sponsor. He submitted that the landlord's evidence of the landlord countered that in the report.
8. Mr Balroop submitted that, if it were accepted that the evidence produced by the Secretary of State did discharge the initial burden on the Secretary of State, then it was incumbent upon the judge to look at all of the evidence in the round. He submitted that the judge had failed to do so as he had not grappled with the evidence in favour of the Appellant and balanced it with the apparent inconsistencies.

### **Error of Law**

9. The issue of the burden of proof where there is an allegation that a marriage to an EEA national is one of convenience was addressed in the case of **Agho** where Underhill LJ set out the correct approach at paragraph 13:

“... What it comes down to is that as a matter of principle a spouse establishes a prima facie case that he or she is a family member of an EEA national by providing the marriage certificate and the spouse's passport; that the legal burden is on the Secretary of State to show that any marriage thus proved is a marriage of convenience; and that that burden is not discharged merely by showing “reasonable suspicion”. Of course in the usual way the evidential burden may shift to the applicant by proof of facts which justify the inference that the marriage is not genuine, and the facts giving rise to the inference may include a failure to answer a request for documentary proof of the genuineness of the marriage where grounds for suspicion have been raised. ...”

10. The issue was recently addressed by the Court of Appeal in the case of **Rosa** where Richards LJ said;

“In my judgement, the legal burden lies on the Secretary of State to prove that an otherwise valid marriage is a marriage of convenience so as to justify the refusal of an application for a residence card under the EEA Regulations. The reasoning to that effect in *Papajorgji* as endorsed in *Agho* is compelling.” [24]

11. In this case the Appellant submitted the marriage certificate and passports thus establishing a prima facie case that he was the spouse of an EEA national. The Secretary of State relied on the Immigration Officer's report to conclude that the marriage was one of convenience.
12. The First-tier Tribunal Judge considered the Immigration Officer's report at paragraph 5 and the beginning of paragraph 6. The judge highlighted the concerns in relation to that report, in particular the fact that it was not

signed and that it did not contain the additional statement from the man who was at the property when the Immigration Officers visited it. However it is recorded in that report that the man living at the property did not know the Appellant's name although he did confirm that someone using the Appellant's middle name had lived at the property until eight months previously and that he had lived there alone. The judge noted at paragraph 6 that the Appellant had not explained why the person at the property would have stated that the Appellant was not living in the property and had left eight months before and was living alone there. It is clear from paragraphs 5 and 6 read with paragraphs 10 and 11, where the judge set out that the initial burden of proof is on the Respondent, that the judge accepted that, despite its deficiencies, the Immigration Officer's report was sufficient to discharge the initial burden of proof upon the Respondent. I do not accept the submission in the grounds that this report has no evidential value. The judge considered the report, acknowledging its deficiencies, along with the Appellant's failure to give an explanation as to why the man at the property would have said what he did. In my view this evidence is capable of being treated as showing more than a reasonable suspicion. It is clear that the judge was entitled, for the reasons he gave, to attach sufficient weight to this report to discharge the burden of proof upon the Respondent.

13. I accept that the judge has expressed some of his own opinions as to what would be reasonably expected of a relationship amongst his reasons. For example, at paragraph 9, the judge considered that it "did not make any sense" that the Sponsor would not buy birthday presents for the Appellant. He also considered that it was not credible that the Appellant and the Sponsor would not go out and that it was not credible that none of the Appellant's family members attended the wedding [10]. These conclusions appear to be based on the judge's own value judgments as to what he would expect in a relationship. Such value judgements are not adequate reasons for rejecting evidence.
14. However, the judge did more than make these observations in giving reasons for his decision. At paragraph 6 the judge took into account that the Appellant had not given an explanation as to why the person living at the property would have said what he did. The judge went on at paragraph 7 to consider the explanation put forward by the Appellant about moving address in August 2014 whilst his application for a residence card was pending. The judge noted that there was no satisfactory explanation as to why the Appellant had not informed the Home Office of his change of address [8].
15. The judge examined the oral evidence of both the Appellant and the Sponsor in detail at paragraphs 8, 9 and 10. The judge highlighted the number of inconsistencies between the evidence of both witnesses. For example, at paragraph 8, the judge noted that the Appellant and the Sponsor gave different colours for the wall of their bedroom at 46 Arbour House and gave different accounts of the furniture in the bedroom. The judge also noted at paragraph 10 that the Sponsor said that she and the

Appellant go for walks sometimes but the Appellant did not say that they go for walks, in fact he said they never go out. The judge further noted that the Appellant and the Sponsor gave conflicting evidence as to the birthday present he gave her for her last birthday, the Appellant said he had given her a watch and the Sponsor said that it was a necklace. Whilst he noted that the Sponsor changed her response in answer to questions from counsel, it is clear that the judge thought that the Sponsor was led in her evidence and attached little weight to the correction. The judge also took into account of the fact that the Appellant and Sponsor gave different answers when asked what they had for dinner the previous evening [10]. The judge noted that the matters highlighted were not of themselves enough to raise suspicion but considered that, cumulatively, they were enough to make out the case for the Secretary of State.

16. The judge took account of the oral evidence from the landlord in relation to the couple moving address and the judge noted that he had read all of the documents on file. It is contended on behalf of the Appellant that the judge gave insufficient consideration to the documentary evidence. It is clear that the judge attached little weight to this documentary evidence but attached very significant weight to the oral evidence concluding that the Appellant and the Sponsor were “inconsistent about their respective personal details in many areas which does not give the impression of a couple living together in a genuine relationship as a married couple” [11]. The judge heard from the Appellant and the Sponsor and was entitled to reach that conclusion based on the oral evidence he heard. In my view the judge has given adequate reasons for his decision to attach more weight to the oral evidence than the documentary evidence and the evidence from the landlord.
17. It is clear to me that the judge took into account all of the evidence as he was required to do. It was open to the judge to conclude that the evidential burden had shifted to the Appellant and that he had failed to discharge that burden and had failed to show that this was not a marriage of convenience.
18. In these circumstances I am satisfied that there is no error in the judge’s decision.

### **Notice of Decision**

19. There is no material error in the decision of the First-tier Tribunal.
20. The decision of the First-tier Tribunal shall stand.
21. No anonymity direction is made.

Signed

Date: 14 June 2017

Deputy Upper Tribunal Judge Grimes

Appeal Number: IA/09715/2015

**TO THE RESPONDENT**  
**FEE AWARD**

As the appeal is dismissed there is no fee award.

Signed

Date: 14 June 2017

Deputy Upper Tribunal Judge Grimes