



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

Appeal Number: IA/26008/2015

THE IMMIGRATION ACTS

**Heard at Field House
On 9th November 2017 and
8th March 2018**

**Decision & reasons Promulgated
On 14th March 2018**

Before

**UPPER TRIBUNAL JUDGE COKER
(UPPER TRIBUNAL JUDGE O'CONNOR ON 9TH NOVEMBER 2017)**

Between

ADEJOKE FOLAKEMIOLUWA ADAMSON

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr J Plowright instructed by Nasim & Co, solicitors
For the Respondent: Mr P Deller, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant, a Nigerian national born on 15 March 1980, married a Polish National (Marik Turkowski) on 4 October 2006. She entered the UK in July 2008 and was subsequently issued with an EEA Residence card valid between 1 March 2010 and 19 February 2015.
2. Mr Turkowski left the UK on 7 November 2014. Their divorce was finalised on 3 June 2016.
3. On 16 January 2015, she applied for a permanent residence card as confirmation of her right to reside permanently in the UK. That application was rejected by the respondent for reasons set out in a decision dated 1 July 2015 on three grounds:

- (i) The respondent did not accept the couple had been lawfully married according to Nigerian Law;
 - (ii) Even if there was a valid marriage it was a marriage of convenience;
 - (iii) It was not accepted that Mr Turkowski had been a qualified person for five years during the course of the marriage.
4. The appellant's appeal against that decision was dismissed for reasons set out in a decision by First-tier Tribunal Judge Greasley promulgated on 5 December 2016. The First-tier Tribunal judge concluded the marriage was a marriage of convenience and in any event, had not demonstrated that Mr Turkowski had been exercising Treaty Rights for the required period.
5. Permission to appeal was granted by UTJ Plimmer on 14 September 2017 on the grounds that it was arguable the judge had failed to consider the circumstances of the marriage as at the date of the marriage (2006), although there was a dearth of evidence as to whether Mr Turkowski had been exercising the relevant Treaty Rights.
6. UTJ O'Connor heard submissions on 9th November 2017 and concluded:
 - (i) The First-tier Tribunal had failed to consider the circumstances of the marriage when it was undertaken namely 4th October 2006;
 - (ii) The First-tier Tribunal had failed to consider what evidence there was of Mr Turkowski's employment and that it was not necessary to demonstrate that he had been in employment in 2014 or any time thereafter; the First-tier Tribunal had proceeded on the basis that the relevant time frame was five years from the date of issue of the appellant's residence card which was incorrect.
7. UTJ O'Connor found an error of law by the First-tier Tribunal and set aside the decision to be remade. He directed that the SSHD request copies from HMRC of any records that relate to Mr Turkowski and the exercise of Treaty Rights; that copies of any attachments to an application for a residence card by a Ms Anderson in October 2011 be disclosed and a copy of the appellant's application for a residence card be produced.
8. A transfer order was made on 6th March 2018, Judge O'Connor being unable to hear the continuation of this appeal within a reasonable period of time. The hearing came before me.
9. The respondent had disclosed correspondence received from HMRC which confirmed that Mr Turkowski had been exercising Treaty Rights until he left the UK. Mr Deller accepted that the only live issue that remained was whether the marriage was a marriage of convenience. If not, he accepted that the appellant was entitled to be issued with a residence card confirming her permanent residence.
10. The respondent had not provided a copy of the attachments to an application made, in 2011, by a Ms Anderson for a residence card on the basis of her marriage to a Mr Marik Turkowski. I had a copy of the application form by Ms Anderson. The date of birth and National Insurance number of the Marik

Turkowski on that application form is different to the Marik Turkowski to whom the appellant was married and for whom not only were the HMRC records disclosed but payslips provided. It cannot be said that the evidence shows that it is likely that the Marik Turkowski that Ms Anderson married is the same Marik Turkowski that the appellant married in 2006. Furthermore, as pointed out by Mr Deller, if the marriage between Mr Turkowski and the appellant were a marriage of convenience it is difficult to understand why some two years would elapse before she came to the UK. As noted by Judge O'Connor, a marriage may be genuine and then fail in the future or even fairly soon after it has been celebrated but that does mean that the marriage was, at its instigation, a marriage of convenience.

11. Mr Deller very fairly accepted that the respondent was unable to discharge the burden of proof that the appellant had undergone a marriage of convenience. The evidence from HMRC confirmed that Mr Turkowski had been exercising Treaty Rights for the relevant period.
12. In these circumstances, I find the appellant did not undergo a marriage of convenience. It follows that her appeal against the refusal of an EEA Residence Card confirming permanent residence is allowed.

Conclusions:

The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law and is set aside.

I re-make the decision in the appeal by allowing it.



Date 12th March 2018

Upper Tribunal Judge Coker