



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

Appeal Number: EA/05769/2018

THE IMMIGRATION ACTS

**Heard at Royal Courts of Justice
On 5 August 2019**

**Decision & Reasons Promulgated
On 13 August 2019**

Before

UPPER TRIBUNAL JUDGE PERKINS

Between

YUDELKA ALTAGRACIA PUJOLS PAULINO
(anonymity direction not made)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr P V Thoree, Solicitor from Thoree & Co Solicitors
For the Respondent: Mr T Lindsay, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal by a citizen of the Dominican Republic against a decision of the First-tier Tribunal dismissing the appeal of the appellant against the decision of the respondent to refuse her a residence card as the family member, in this case the wife, of an EEA national exercising treaty rights in the United Kingdom.
2. I remind myself that it is not my function to engage in a free ranging review of all that the First-tier Tribunal did but to consider the First-tier Tribunal's reasons for dismissing the appeal and the grounds that criticise that decision.

3. In outline, the Secretary of State decided that the marriage was a marriage of convenience. The First-tier Tribunal agreed and the grounds of appeal allege that that decision was wrong.
4. I begin by considering in detail the decision of the First-tier Tribunal. It is the appellant's case that her relationship with the European Economic Area National commenced on 30 April 2015 after she met him at his sister's birthday party at the beginning of that month. She said that cohabitation commenced on 15 August 2015 at an address beginning "Flat 27", that they decided to marry on 29 June 2017 and they did marry on 28 March 2018. The application was refused on 9 August 2018 and the decision was appealed.
5. The respondent gave reasons in a Reasons for Refusal Letter dated 9 August 2018. The respondent was particularly concerned by inconsistencies between the appellant's account of her relationship and answers given by the appellant's husband during a marriage interview with an officer of the respondent.
6. The First-tier Tribunal Judge noted that the two issues for him to determine were whether the marriage is a marriage of convenience and in order to achieve that end if reliance can be given to the marriage interview notes.
7. The First-tier Tribunal heard from the appellant and from the European Economic Area National. It is not disputed that there were difficulties in the evidence. The First-tier Tribunal Judge noted that there were three dates given by the appellant's husband in answer to questions about the time of his arrival in the United Kingdom none of which appear to be correct. There was a purported tenancy agreement relating to Flat 27 but it was not signed by the parties. The appellant's husband had used a different address in an application in 2016. The appellant's husband claimed not to know his sister's address in Vauxhall where he stayed for a month when he first arrived in the United Kingdom and he claimed to have moved to Flat 27 from his sister's address in Vauxhall a month after his date of arrival which would have been 29 May 2015 but the tenancy agreement did not start until August 2015. The appellant's husband claimed to have started seeing her on 15 May 2015 even though he had said elsewhere that he had not arrived in the United Kingdom until 29 May 2015. He claimed not to know the address where the appellant had been living before, according to the appellant and her husband, moving into the husband's address. The appellant's husband claimed to have moved to Flat 27 together with the appellant on 15 May 2015 before he admitted to being in the United Kingdom and before the tenancy agreement dated August 2015. Further he could not remember the name of the restaurant where he proposed to his wife (the appellant) or where he kept the engagement ring when he made his proposal saying, variously, that the ring was "inside in a flan" or "in my hand". Although he claimed to have received utility bills in joint names none were produced and he could not agree with his wife about the precise nature of his occupation. There are

other examples given. It might fairly be said that the appellant's husband was "all over the place" in interview.

8. The First-tier Tribunal Judge gave many reasons to support his finding that the marriage was probably a marriage of convenience. Paragraph numbered 30, although it is in fact a continuation of paragraph 28, gives as a reason "the total lack of any family members of the Register Office wedding ceremony (not even the EEAN's London-based sister with whom he stayed on first arriving here)" and the "total lack of any family members at the restaurant celebration" and the "resounding (astonishing even) total lack of any supporting witnesses (friends/colleagues) appearing at the appeal hearing".
9. The appeal was dismissed.
10. Before me Mr Thoree relied on the grounds. The first ground of substance, at number 3, says "it is submitted that the IJ erred in law, in that the applicant (sic) was unfairly prejudiced given that IJ only considered her Spanish husband's interview notes and not hers".
11. This was said to be unfair. This criticism is not made out. It is a cause of the vexation that the Secretary of State did not provide a copy of the wife's interview notes. It appears that she had been ordered to do that. For some reason she only produced the notes relating to the husband. This would have been a much more powerful point if there was some reason to think that something exculpatory had said in the wife's interview that had been ignored. There is no reason to think that. All the interview notes could do, as far as I can make out, is to confirm the discrepancies that concerned the Secretary of State. There is no material irregularity in the judge deciding the case without waiting for the further evidence.
12. The grounds then complain that it is the appellant's husband's case that he suffers from a severe memory problem. He attributes this to a suffering a fall as a child and has provided a letter from the doctor. The letter is described as unchallenged but the letter does not seem to provide any explanation for poor memory. It confirms an injury on 5 April 1994 attributed to a fall. The treatment seemed to be rest and observation and then "follow-ups". As far as I can see there was no independent evidence to support the contention that the appellant's husband had a medical explanation for being a poor historian.
13. However, even if there was such an explanation, it would not assist the appellant. The fact that there may be (I have not seen it) an independent explanation for his inability to answer straightforward questions in a reliable way does not make the answers he gave any more helpful or reliable. It simply means that it might be unfair to make something negative out of his answers.
14. In addition to problems in the appellant's husband's account, the judge was particularly concerned at the absence of family support. Not only was

there no family support before the judge but there was no suggestion of family support at the marriage ceremony or at a meal that followed.

15. I appreciate there is some correspondence supporting the claim that the appellant and her husband are “a genuine couple” but it is in rather general terms and not explained. Without the advantage of oral evidence which is subject to cross-examination the judge cannot be expected to apply very much weight to such evidence. The judge was entitled to find the explanation for the lack of family support being attributed to an unexplained argument to be contrived.
16. This is a case where the judge was persuaded the marriage was a marriage of convenience because the only evidence he had that was in any way consistent or helpful is the evidence of the appellant herself. That had to be set against her husband’s inability (“failure” might be a better word) to give supportive evidence, the lack of any oral evidence of any family members or friends and the failure of the documentary evidence to indicate prolonged cohabitation.
17. I did not agree that the judge erred by allowing the respondent’s representative to cross-examine the witness. The fact that a person has a memory problem does not necessarily mean they cannot be cross-examined fairly and it certainly does not mean that cross-examination is inherently oppressive or otherwise improper. There are ways of dealing with people who have difficulties. Typically, arrangements can be made before the hearing to discuss what should be done. There is no suggestion that such measures were ever asked for in this case. It is not an error in law failed to anticipate something which did not seem to be a problem at the time.
18. There was some dispute before me that exactly what happened in the First-tier Tribunal. It was never said in the grounds that there was an application for an adjournment and it was really too late to take that point now. These are the kind of things that need to be raised before the hearing when proper preparation can be made. Taken as a whole I am persuaded that there is no material error here and I dismiss the appellant’s appeal.
19. There is no unlawful behaviour on the part of the Tribunal here. The proceedings were not unfair. The judge has reached a permissible decision on the totality of the evidence.


Signed
Jonathan Perkins
Judge of the Upper Tribunal

Dated 6 August 2019