



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

Appeal Number: EA/09049/2021
UI-2022-000090

THE IMMIGRATION ACTS

**Heard at Field House
on 17 May 2022**

**Decision & Reasons Promulgated
on 14 July 2022**

Before

**UPPER TRIBUNAL JUDGE McWILLIAM
UPPER TRIBUNAL JUDGE CANAVAN**

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**OGADIMMA LYNDA ASONYE
(NO ANONYMITY ORDER MADE)**

Respondent

Representation:

For the appellant: Mr D. Clarke, Senior Home Office Presenting Officer

For the respondent: Mr L. Youssefian, instructed by DJ Webb & Co. Solicitors

DECISION AND REASONS

1. For the sake of continuity we shall refer to the parties as they were before the First-tier Tribunal although technically the Secretary of State is the appellant in the appeal before the Upper Tribunal.
2. The appellant (Ms Asonye) appealed the respondent's (Secretary of State) decision dated 13 May 2021 to refuse Indefinite Leave to Remain ('settled status') or limited leave to remain ('pre-settled status') under the EU

Settlement Scheme based on her marriage to an EEA citizen. The appeal was brought under The Immigration (Citizens' Rights Appeals) (EU Exit) Regulations 2020 on the ground that the decision was not in accordance with the residence scheme immigration rules.

3. The application was refused with reference to paragraph EU11 (settled status) and paragraph EU14 (pre-settled status) of Appendix EU of the immigration rules. The respondent asserted that she had 'obtained evidence in the form of multiple EEA legacy applications' which showed that the EEA sponsor had 'sponsored applications for multiple applicants while seemingly still married to other spouses'. Based on that information the respondent asserted that there were reasonable grounds to suspect that the marriage was one of convenience entered into as a means to 'circumvent the requirements for lawful entry to or stay in the UK or Islands' (Annex 1, Appendix EU).
4. The appellant and her husband were invited to attend an interview, which took place on 07 May 2021. The appellant says that she separated from her husband in December 2020. She attended the interview alone. The interview was recorded but no transcript has been provided although the appellant was provided with a recording of the interview after the application was refused. The only evidence relating to the interview was a document entitled 'Interview Summary Sheet', which appears to be an internal document explaining the interviewer's recommendations. It is clear from the face of the document that it only summarises the interviewer's views about the information given at the interview and focuses solely on the reasons why the appellant was not considered credible. The record states: 'Over the course of the interview, the following credibility issues came to light'. The summary is a partial representation of the interview from the interviewing officer's point of view rather than representing a record of what questions were asked and the answers that were given. The interviewing officer's conclusion was:

'There were significant credibility issues throughout the course of the interview. The applicant clearly knew very little about the EEA sponsor and it is doubtful if they have ever lived at the same property together. The applicant was not able to name any of his immediate and closest family members (other than his father). Although she knew the father's name she knew nothing about the family. She knew no real details about the EEA sponsor's life. It is not credible that a couple claiming to have been in a genuine relationship since 2013/2014 up until last year would be unable to answer questions on the topics mentioned above. The questions the EEA sponsor could answer appeared to be superficial, on many occasions when asked a question she would always state 'what he told me' prior to answering in what appeared to be a reason for potentially not knowing the answer. Any further consideration of this application should be done on the basis of this marriage being, on the balance of probability, a marriage of convenience.'
5. First-tier Tribunal Judge Sweet ('the judge') allowed the appeal in a decision promulgated on 29 December 2021. He noted that the appellant had prepared two witness statements and that bundles had been filed by

both parties. He heard evidence from the appellant, who was cross-examined. It is easier to quote his findings rather than attempt to summarise an already brief decision.

- '3. The respondent's reasons for refusal were set out in his letter of 13 May 2021. The respondent concluded that the appellant's marriage to her EEA citizen partner, Junior Augustin Sikely, (a French citizen), was a sham marriage. In the marriage interview she was unable to provide details of the EEA's (sic) sponsor's family and background, the identity of his children, his travel history, his relationship, nor did she provide a tenancy agreement in joint names. She was unaware of his previous marriages.

...

6. The appellant made an application for an EU Settlement Scheme permit as a spouse of an EEA citizen on 23 November 2020. The respondent refused the application on the grounds that her marriage to Junior Augustin Sikely (an EEA/French citizen), which took place on 17 December 2015, was a sham marriage. This was based upon the replies which she gave at her marriage interview on 7 May 2021. The appellant explained in oral evidence, and in her subsequent witness statement, that there was no reason why she should have known all the information which the respondent expected her to have known of her husband's family circumstances. This included the fact that he had three children in France, who lived with their mother, and that she was not aware of other details of his family. She had spoken to his father every two months and she had introduced her sister to her husband on a number of occasions. They had each been previously divorced, but the appellant was only aware of his being divorced once. The Home Office had approved their marriage in a letter dated 17 September 2015. She was aware that he had been injured in a motor accident in Paris in August 2015.
7. The audio-tape of the marriage interview of 7 May 2021 was sent to the appellant's solicitors on 14 May 2021, and their application for an adjournment on the grounds of seeking a full transcript was refused by Judge Bulpitt on 9 December 2021. The appellant's representative confirmed that the appellant herself had managed to listen to the tape, thought the representative had not done so.
8. The burden of proof on proving that this was a sham marriage is on the respondent. Apart from the lack of information by the appellant her spouses' family circumstances, there was also the question of there being no tenancy agreement in joint names. The appellant explained that she rented her property from the council and she said that she had notified the council that he was living there, but as no amendment was made to the tenancy agreement, I am not persuaded that that account is truthful. There is some evidence, in the form of tax letters and student finance letter, that her spouse was indeed living at the same address as the appellant, namely [the address], but there are also other documents showing that the spouse was living in Bromley and Catford.
9. The appellant herself had an EEA residence card from 14 June 2016 to 14 June 2021. Following difficulties in her marriage, they separated in

December 2020 and she was divorced from her spouse on 24 June 2021.

10. Though I agree with the respondent that there are some issues relating to the appellant's knowledge of her spouse's family, and some of her oral evidence was somewhat vague (for example, as to whether or not she had notified the council that her husband was living at the rented property), I am not persuaded that the respondent has met the burden of proof that this was a sham marriage. It had previously been approved by the Home Office in September 2015. It is understandable in view of her spouses' previous relationship and the fact that he had three children living in France with their mother (whom she described in oral evidence as 'protective'), that he would not necessarily wish to share those relationships with the appellant. I also accept the Presenting Officer's submissions that it is surprising that the appellant did not call other evidence, in particular from her sister or friends who were present at the marriage, to confirm that this was a genuine marriage. The respondent did not provide details of the sponsor's previous sponsorships. However, I accept that the appellant was genuinely married to an EEA citizen at the material time.
11. As I have concluded that the respondent has not met the burden of proof that this was a sham marriage, I allow the appeal on the balance of probabilities as the appellant was the spouse of an EEA citizen.'

6. The respondent applied for and was granted permission to appeal to the Upper Tribunal. Mr Clarke accepted that the grounds of appeal, which largely made submissions relating to the evidence, were not clearly particularised. He drew the following five points from the pleadings:
 - (i) Having found that the appellant was not truthful about notifying the council that the EEA sponsor was living at her address, the judge failed to give adequate reasons and failed to resolve the conflict in the evidence relating to co-habitation given that there was other evidence to suggest that the EEA sponsor had also lived 'in Bromley and Catford'.
 - (ii) The judge failed to address the credibility points raised in the decision letter relating to the appellant's knowledge of the EEA sponsor's family and travel history.
 - (iii) The judge made contradictory findings relating to the appellant's knowledge of the EEA sponsor's children.
 - (iv) The judge failed to give adequate reasons that would enable the losing party to understand why the appeal was allowed.
 - (v) The judge failed to give adequate consideration to the 'indicative criteria' identified in *Papajorgji (EEA spouse - marriage of convenience) Greece* [2012] UKUT 00038 (IAC).

Decision and reasons

7. We accept that the judge's findings are brief. They could have been more clearly structured and more detailed in their explanation of each of the issues. However, we also bear in mind that it is trite that a judge is not

required to deal with each and every issue or piece of evidence. The level of reasoning required might depend on the nature of the legal issues and the facts and evidence in each case.

8. In this case the judge correctly identified that the burden of proof was on the respondent to show on the balance of probabilities that the marriage was one of convenience. It was open to the judge to take into account the fact that the respondent had previously issued the appellant with a residence card recognising a right of residence as a family member under European law. It was reasonable to infer from that action that, at the time the respondent issued the residence card in 2016, she was satisfied that the appellant's marriage to Mr Sikely was not one of convenience. We note that this fact was not taken into account by the officer who made the recommendation in the 'Interview Summary Sheet' nor by the Home Office decision maker who issued the refusal letter. Whilst it did not form the starting point of the decision in a structural sense, it was an important factual starting point.
9. It is of course open to the respondent to review her position if new evidence comes to light. The decision letter stated that the respondent had obtained evidence which indicated that Mr Sikely had sponsored multiple applications. This is a serious allegation that might be relevant to the assessment of whether the marriage was one of convenience. However, the appellant was not provided with any evidence to support this assertion in order to respond to the allegation. In her witness statement she said that she was aware that her husband had been married previously but so had she. They did not discuss their previous relationships in detail. In the absence of any specific evidence, it was difficult for the appellant to say much more than she did.
10. The judge was faced with a situation where the two key planks of the decision letter were not supported by any meaningful evidence. The assertion that the EEA sponsor supported multiple applications was entirely unsupported. The assertion that the appellant's answers in interview were vague and lacking in detail was only based on the interviewing officer's note of the interview in which the focus was entirely on the reasons why she was not considered credible. In the absence of a proper transcript, the judge was unable to assess what weight could be put on those views.
11. The judge had the benefit of two detailed witness statements and had the opportunity to speak to the appellant at the hearing. He had taken into account the evidence she had given in response to the reasons for refusal and accepted some of her explanations [6][10]. At [3] of the decision he summarised the main credibility issues highlighted in the decision letter including the issues relating to the appellant's knowledge of the EEA sponsor's family members in France, information about his children, his travel history, past relationships, and evidence of co-habitation.

12. In considering the evidence relating to co-habitation, it is clear that the judge did not accept a specific element of the appellant's evidence i.e. that she notified the council that the EEA sponsor was living with her [8] [10]. One of the reasons why he rejected this account was the fact that the tenancy agreement was not amended to include his details. In her witness statement, the appellant suggested that she did not consider it necessary to amend the tenancy agreement when the EEA sponsor moved in with her because everything was set up in her name.
13. The judge also considered other evidence of co-habitation in the form of correspondence. He noted that there were letters from HMRC dated 22 March 2019 and 12 May 2019 addressed to the EEA sponsor at the appellant's address and a letter from Student Finance England dated 11 April 2019 addressed to him care of the appellant.
14. The judge also noted what might appear to be countervailing evidence of the EEA sponsor living at other addresses. There was a partial bank statement covering a period in September 2015, sent to an address in Catford. A copy of the marriage certificate indicated that the EEA sponsor was living at the Catford address when they married. There is nothing particularly unusual about the fact that the couple might not have been living together prior to their marriage on 17 December 2015. The only piece of evidence that might have indicated that the EEA sponsor was using another address after they were married was another letter from HMRC dated 21 November 2018 sent to an address in Bromley. The appellant's witness statement does not make clear when they began to co-habit. The judge noted that some of the evidence supported the appellant's claim that they co-habited, he also took into account other evidence that might have pointed the other way. When analysed, there was in fact only one very limited piece of evidence to indicate that after their marriage the sponsor received a single piece of correspondence at another address in 2018.
15. There was extremely limited evidence that might positively undermine the appellant's claim that they co-habited after the marriage. In the absence of any evidence to indicate whether the appellant was asked about the letter from HMRC dated 21 November 2018, we conclude that the evidence was so limited that the judge's failure to resolve this specific conflict is not such that it could amount to an error of law. It is clear that he considered evidence that supported the claim to co-habitation and evidence that went against. This formed part of his overall finding that the evidence relied on by the respondent was insufficient to discharge the burden of proving that this was a marriage of convenience.
16. For similar reasons the grounds relating to the other issues highlighted in the decision letter do not disclose an error of law. The appellant produced detailed statements addressing each of those issues. It is clear that the judge considered her responses relating to her knowledge of the EEA sponsor's family and to some extent accepted them [6] [10]. Given that the evidence indicated that his three children (from different mothers)

lived in France, and that the appellant had never met them, the fact that she had fairly limited knowledge of those matters was not something that necessarily pointed strongly towards it being a marriage of convenience. The appellant explained that the subject of children was a sensitive one because she suffered a still birth in 2014 and had no children of her own. Nothing in this explanation was inherently implausible.

17. Although the judge did not specifically mention the question of the appellant's knowledge of the EEA sponsor's travel, it is difficult to see how it could have made any material difference to the outcome of the appeal. In fact, the only point made about the series of subjects highlighted in the decision letter was that the appellant was unable to give detailed information about matters that, in the respondent's view, she should have known more about. Again, the appellant explained in her statement that the EEA sponsor did not travel much. In the absence of any countervailing information from the respondent to show that this statement might have been incorrect, such as records showing that the EEA sponsor did in fact travel regularly, it is difficult to see how this could have been viewed as a weighty point that would have made any material difference to the outcome of the assessment.
18. The judge noted that there was a lack of evidence from friends or family to testify to the relationship. Although such evidence would have assisted the appellant to rebut the assertions made in the decision letter, the burden of proof was not on the appellant.
19. The remaining points made in the grounds of appeal were not particularised beyond a bare assertion that the judge had failed to consider the 'indicative criteria' of a marriage of convenience with reference to the decisions in *Papajorgji* and *Sadovska v SSHD* [2017] UKSC 54. Nor was this point expanded upon at the hearing.
20. We accept that the First-tier Tribunal's reasoning was brief and that the decision could have been explained in more detail. However, the evidence before the First-tier Tribunal was extremely limited. There was no meaningful evidence to support either of the key reasons for refusal. There was no evidence to support the allegation that the EEA sponsor had supported multiple applications. There was no record of the questions and answers at interview to place the opinion given by the officer in the 'Interview Summary Sheet' in proper context. When analysed, the highest the respondent's case went was to assert that the appellant gave vague answers at interview, not that she gave incorrect or contradictory answers. It was open to the judge to consider the appellant's explanations as to why she was unable to give detailed information about various matters.
21. The grounds of appeal make general submissions as to why the judge should have found that the marriage was one of convenience but fail to identify any material errors of law in the decision. It is clear that the judge had considered the points in the decision letter. He considered what limited evidence there was that might point for and against the assertion

that the marriage was one of convenience. He identified and applied the correct burden and standard of proof. When the limited evidence before the judge is analysed, it becomes clear that his conclusion that the respondent had failed to produce sufficient evidence to discharge the burden of proof was within a range of reasonable responses to the evidence. In the light of the minimal evidence before the judge we find that his reasons for allowing the appeal are capable of being easily understood by the Secretary of State. The grounds amount to nothing more than a disagreement with the outcome.

22. We note that the judge allowed the appeal on the basis that 'the appellant was the spouse of an EEA citizen' without any further analysis of the requirements of the immigration rules contained in Appendix EU. We observe that at the date of the First-tier Tribunal hearing the appellant was no longer married to the EEA sponsor. We also note that Appendix EU provides for applications made by those who are family members of relevant EEA citizens and also appears to make provision for those who would have retained a right of residence under EU law following divorce.
23. In view of the fact that the decision letter concentrated solely on the question of whether the marriage was one of convenience, we conclude that it was not necessary for the judge to go beyond the scope of the reasons for refusal, especially when there is nothing to suggest that the respondent's representative went on to make alternative submissions relating to other aspects of the settlement scheme rules.
24. For the reasons given above, we conclude that the First-tier Tribunal decision did not involve the making of an error on a point of law. The decision shall stand.

DECISION

The First-tier Tribunal decision did not involve the making of an error on a point of law

Signed M. Canavan Date 26 May 2022
Upper Tribunal Judge Canavan

NOTIFICATION OF APPEAL RIGHTS

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within the **appropriate period** after this decision was **sent** to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent:

2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically)**.

3. Where the person making the application is in detention under the Immigration Acts, **the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically)**.

4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days (10 working days, if the notice of decision is sent electronically)**.

5. A “working day” means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.

6. The date when the decision is “sent” is that appearing on the covering letter or covering email