



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

Appeal Number: OA/08402/2013

THE IMMIGRATION ACTS

Heard at Bradford

**Determination
Promulgated**

On 8 January 2014

On 22 January 2014
.....

Before

UPPER TRIBUNAL JUDGE CLIVE LANE

Between

ENTRY CLEARANCE OFFICER - WARSAW

Appellant

and

HALYNA KOROTYSH

Respondent

Representation:

For the Appellant: Mr Diwnycz, Senior Home Office Presenting Officer

For the Respondent: Mr Igors Nilovs (sponsor)

DETERMINATION AND REASONS

1. The respondent, Halyna Korotysh, was born on 22 December 1979 and is a female citizen of Ukraine. The appellant had made an application under the Immigration (European Economic Area) Regulations 2006 to reside in the United Kingdom as the spouse of an EEA national, Mr Igors Nilovs (hereafter referred to as the sponsor). The application was refused by the Entry Clearance Officer, Warsaw by a decision dated 6 March 2013 and the respondent appealed to the First-tier Tribunal (Judge M J H Wilson) which, in a determination promulgated on 13 November 2013, allowed the appeal. I shall refer to the appellant as the "respondent" (as she was

before the First-tier Tribunal) and to the respondent, Halyna Korotysh, as the “appellant”.

2. The sole ground for refusal was that the ECO considered that the marriage of the appellant and sponsor was a marriage of convenience. Judge Wilson concluded that it was not and accordingly allowed the appeal.
3. The first ground of appeal asserts that the judge failed to have regard to previous applications for entry clearance made by the appellant in which she had allegedly relied upon false documents in support. Mr Diwnycz, for the Entry Clearance Officer, did not seek to rely upon these grounds. He told me that the Entry Clearance Officer was unable to prove to the required standard that the previous applications had been supported by false documents.
4. The grounds go on to assert that the burden of proof had been reversed by reason of the suspicions generated by the appellant’s alleged reliance upon false documents and that the appellant should have been “invited to respond to the basis of suspicion by producing evidential material to dispel it” (**Papajorgii (EEA - marriage of convenience) Greece [2012] UKUT 00038 (IAC)** at [27]). The difficulty with that ground is that the Tribunal was not dissuaded that a suspicion did arise given that the Entry Clearance Officer is unable to prove that false documents were relied upon in respect of the previous applications. In any event, Judge Wilson was well aware (see [13]) of the allegation regarding false documents and he found that the sponsor (who gave oral evidence before him) remained credible in his evidence notwithstanding. Further, the sponsor gave oral evidence before the judge which the judge found entirely credible and also produced documentary evidence which the judge had “no grounds for doubting ... reflected in general terms exchanges of an intimate nature between the appellant and the sponsor, a finding I make on the balance of probabilities” [14]. Even if the burden of proof had shifted, I find that Judge Wilson’s careful and thorough determination records that he accepted both the oral and documentary evidence produced by the appellant and sponsor to prove that the marriage was genuine. The grounds complain that the judge only heard the sponsor’s evidence and did not have the benefit of hearing from the appellant. Given that the appellant is resident abroad, that is hardly surprising. The judge was entitled to determine the appeal on the basis of the evidence which was adduced before him and I have no doubt in finding that the judge has provided sufficient reasons for rejecting the ECO’s assertion that the appellant and sponsor had entered a marriage of convenience. Accordingly, this appeal is dismissed.

DECISION

5. This appeal is dismissed.

Signed

Date 21 January 2014

Upper Tribunal Judge Clive Lane