



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

Appeal Number: IA/04882/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 16 June 2015**

**Determination Promulgated
On 9 July 2015**

Before

DEPUTY JUDGE DRABU CBE

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

And

Mrs KA

ANONYMITY DIRECTION MADE

Respondent

Representation:

For the Appellant: Mr David Clark, Senior Presenting Officer.

For the Respondent: Mr B Inquai, Legal Representative from IR Immigration Law LLP

DECISION AND REASONS

1. This is an appeal brought by the Secretary of State against the decision of the First Tier Tribunal Judge Tiffen who allowed the appeal of the claimant (hereinafter referred as respondent) against the decision of the Secretary of State (hereinafter referred to as the appellant) refusing her further leave to remain on the ground that her marriage to an EU citizen was a marriage of convenience. The Judge found that the appellant had not discharged the burden of proof. Permission to appeal to the Upper Tribunal was granted by Judge Levin, a judge of the First Tier Tribunal.

2. The respondent is a national of Morocco and her date of birth is 15 February 1989. She entered the United Kingdom on 15 September 2013 with entry clearance as a family member of an EEA national until 23 November 2013. On 8 October 2013 she applied for the grant of Residence card as the spouse of an EEA national. On 13 December 2013 the appellant refused to issue her a Residence Card applying Regulation 2 of the Immigration [EEA] Regulations 2006. The reason for the decision to refuse was that the appellant was satisfied that the marriage undertaken by the respondent on 23 January 2013 was one of convenience for the sole purpose of the respondent remaining in the United Kingdom.
3. Judge Tiffen at Taylor House heard the appeal against the decision on 26 January 2015. The appellant was represented at the hearing but the appellant was not and no reason was offered for the absence.
4. In his decision promulgated on 3 February 2015, Judge Tiffen has given reasons for allowing the appeal. The appellant contends in his grounds of appeal to the Upper tribunal that the Judge of the First Tribunal erred in law in allowing the appeal as the appellant had satisfied the burden of proof upon her by producing and relying upon letters written by the husband stating that the marriage was one of convenience. At the hearing the respondent gave evidence and stated inter alia that she had married her husband because she loved him and that it was he who had filled her application for Residence Card and she had simply signed the form. She drew attention of the Judge to the copies of exchange of messages between her and her husband on Facebook while she was in Morocco. She said that while she was in Morocco she had never thought of coming to the UK. She claimed that her husband had subjected her to violence and rape. She adopted her written witness statement as her evidence in chief. The Judge found her to be a credible witness and stated that her evidence was supported by photographic evidence and the police report in her bundle. The Judge said, "I accept that this Appellant has been the victim of domestic violence from her husband whom she married in Morocco following a short romance initially started on the Internet." The Judge went on to say, "There is nothing whatsoever in the Appellant's evidence to support her husband's allegation that so far as the Appellant was concerned the marriage was not genuine." Taking account of the relevant case law (**Papajorgji [2012] UKUT 00038**) the Judge appraised the evidence that was before him. He said, "I have considered the chronology of events and note that the letter sent by the husband to the UKBA was sent at the same time as the Appellant claims that her husband raped her. In his second undated letter he states that he asked the police to remove her from the house but that does not accord with the Appellant's evidence or the police report. The Appellant let the property voluntarily following the assault upon her. I take into account that the Appellant is a very young, slightly built vulnerable female and there can be no other explanation for the bruises and the police report other than that she is a victim of domestic abuse. The correspondence from the husband therefore should be considered in the light of this and the Respondent should have made further enquiries before reaching the decision."

5. At the hearing before me Mr Clark for the appellant amplified the grounds of appeal and argued that the material error in law in the decision is demonstrated by the fact that the Judge did not consider the letter from the CPS, which stated that the husband had been found not guilty of the charges he had faced. This according to the appellant showed that the respondent was not credible and that her allegations of rape and domestic abuse were untrue. Mr Inquai asked me to read the letter from the CPS with care as the letter itself says that it is not clear how the husband was found not guilty. He said that the decision of Judge Tiffen was one that was open to him to make and his reasoning showed no material error of law.
6. I reserved my decision, which I now give with the following reasons. I agree with Mr Inquai that the decision of Judge Tiffen does not have any material error of law. The Judge appraised all the facts correctly and in the light of all the facts including the credible evidence of the respondent he found that the appellant had failed to discharge the burden of proving that the appellant's marriage was one of convenience. The alleged non-consideration of the CPS letter is not correct as the Judge said he could not understand how and why it happened. Criminal trials and verdicts at the level where his case was heard do not require reasons to be given. So one cannot speculate to the disadvantage of the respondent who the Judge found to be a credible witness.
7. It is properly arguable that the decision to grant permission to appeal by Judge Levin was defective in that it does not spell out the material error of law, which the grounds had raised, and which were arguable. However as this point was not argued, I leave this matter without further pronouncement.
8. I dismiss this appeal. That means that the decision of Judge Tiffen will stand in its entirety including his direction on anonymity and award of fee.

K Drabu CBE
Deputy Judge of the Upper Tribunal

Date: 7 July 2015