



IAC-FH-CK-V1

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

Appeal Number: IA/32317/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 5 October 2015
Prepared 5 October 2015**

**Decision & Reasons Promulgated
On 7 October 2015**

Before

UPPER TRIBUNAL JUDGE MCGEACHY

Between

IBRAHIM ADESAKIN YUSUF

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Akeem Ayeni of Messrs Ineyab Solicitors

For the Respondent: Mr Chris Avery, Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant, a citizen of Nigeria born on 2 April 1983, appeals with permission against a decision of Judge of the First-tier Tribunal Majid, who in a determination promulgated on 20 May 2015 dismissed the appellant's appeal against a decision of the Secretary of State to refuse to issue a residence card as the spouse of an EEA national.
2. It was the appellant's claim that he had married a Portuguese national, Paula Filipa Coelho Da Cruz Eusebio, on 26 June 2014.

3. After the appellant's application had been received an Immigration Officer visited the address on the tenancy agreement submitted by the appellant with his application in order to verify the authenticity of the relationship between the appellant and the sponsor. The door of the house was opened by a Nigerian national, Mrs Adebisi Oshodi, who stated that there was no male living at the address and that she did not know the appellant or his EEA sponsor. However, an Immigration Officer had seen a male at the rear of a neighbour's property. That male was handcuffed and it was established that he was the appellant. The property was then inspected. A Thames Water payment card and Lloyds visa card were found in the sponsor's name but there were no clothes, toiletries or other belongings relating to the sponsor. The Immigration Officer was told by the appellant that the sponsor was in Portugal and that he was unable to find a photograph of her on his phone. It appeared that there was documentation which suggested that the appellant lived at the address with a Rashidat Morunrayo Yusuf. A national insurance card was found for the sponsor as well as one for a Carlos Alberto Lima Dais Da Graca. Given that the sponsor was not living at the address the authenticity of the tenancy agreement was not accepted.
4. The application having been refused the appellant appealed, requesting that the appeal be dealt with on the basis of the papers before the Tribunal. These included a chronology, a skeleton argument which argued, in particular, that the marriage was genuine and that the Secretary of State had not discharged the burden of proof upon her to show that it was not, and that the appellant's Article 8 rights were also infringed by the decision. The relevant IDIs were also included as was a witness statement from the appellant stating that he had met the sponsor in Streatham Common station and asserted that he had shown the officers clothes belonging to his wife and pictures. He asserted that he had provided a lot of information to support the fact that the marriage was genuine to the Immigration Officer. He said that his wife had been in Portugal but had come back to Britain on 20 August 2014. There was a witness statement from the sponsor, who said that she had been in Portugal and could not return until 20 August because of her father's health and that her marriage was genuine and she loved her husband. She could not be expected to leave the country with him. A bank statement and a number of photographs were also produced.
5. In a second bundle, produced before the hearing, payslips for the appellant and his wife were also produced as well as utility bills and documents from the appellant's niece. A supplementary witness statement was submitted when the appeal was adjourned which repeated the assertion that the appellant was cohabiting with his wife. He said he could not comment on the statement of Mrs Adebisi Oshodi as he had not seen details of the interview with her and denied that his was a marriage of convenience.
6. The appeal was determined on the papers by Judge Majid on 15 May. It does not appear from the face of the documents that he had considered

the documentary evidence – certainly he makes no reference thereto apart from asserting that he had looked at all the papers before him – and he appears to have placed weight on the fact that the appellant’s wife had been stated to be unable to take time off work. He dismissed the appeal.

7. Mr Avery correctly accepted that there was a material error of law in the determination and that the judge had simply not engaged with the facts or evidence before him and his determination lacked reasoning.
8. I set aside the decision of the judge in the First-tier and stated that I would go on to hear submissions and remake the decision. Mr Ayeni then made submissions placing weight on the fact that there were no notes of the interview with the appellant which had taken place when the Immigration Officer had visited his home. He asserted, with reference to the determinations of the Upper Tribunal in **IS (marriages of convenience) Serbia [2008] UKAIT 00031** and **Papajorgji (EEA spouse - marriage of convenience) Greece [2012] UKUT 00038 (IAC)** that the burden of proof lay on the respondent to show that this was a marriage of convenience and that that had not been discharged. It was incumbent on the Secretary of State to produce the notes of interview and this had not been done and indeed there was no clear evidence to back up the respondent’s allegations.
9. I asked him why the appellant was not in court and he stated that this had originally been a paper case and that that was the reason why the appellant was not in court and indeed why his wife was not in court.

Discussion

10. I first considered whether or not the Secretary of State has discharged the burden of proof upon her to show that this is a marriage of convenience.
11. I have considered the evidence before the Secretary of State and in particular the three pieces of evidence which were sent in with the application – the marriage certificate, the tenancy agreement and a Thames Water bill. The reality is that those documents were insufficient to show that the appellant was in a genuine marriage and that when a visit was made to the address in the tenancy agreement there was no evidence there that the appellant’s wife was living there and there was evidence from the person who answered the door not only that she did not live there but also that the appellant did not. No further evidence was put to the Secretary of State after the appellant was detained and indeed his wife, the Immigration Officer was told, was in Portugal. I consider that that evidence is sufficient to show that the Secretary of State had discharged the burden of proof upon her.
12. The appellant was, of course, entitled to appeal and did so. Further documentary evidence was produced but the appellant took the decision not to appear at the hearing before the First-tier Judge nor, of course, did he appear before me. I have considered the additional documentary

evidence which was put forward which included statements by the appellant and his wife. The reality is that they give remarkably little detail of their married life and although there are some payslips for both the appellant and his wife and a bank statement for his wife those documents do not indicate that the appellant is living with his wife or that the marriage is genuine. I consider that there is no evidential value in the statements. I consider that I am entitled to place weight on the fact that neither the appellant nor his wife gave evidence before me. Had they done so they might have been able to discharge the burden of proof which lies on the appellant to show that this is not a marriage of convenience. They did not do so and I consider that the burden of proof has not been discharged.

13. Although therefore I have set aside the decision of Judge of the First-tier Tribunal Majid I remake the decision and dismiss this appeal on immigration grounds. I would add that there is no evidence before me to indicate that the appellant is exercising family or private life here and I therefore do not consider that his rights under Article 8 of the ECHR are engaged.

Notice of Decision

The appeal is dismissed on immigration grounds.

The appeal is also dismissed on human rights grounds.

No anonymity direction is made.

Signed

Date

Upper Tribunal Judge McGeachy