



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

Appeal Numbers: IA/48145/2013  
IA/48148/2013

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 31<sup>st</sup> October 2014**

**Decision & Reasons  
Promulgated  
On 5<sup>th</sup> January 2015**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE DAVIDGE**

**Between**

**MRS MARGRET ODUNAYO OMOZEJELE (FIRST APPELLANT)  
MS CHRISTIANA MODUPE OMOYEMEN OMOZEJELE (SECOND  
APPELLANT)  
(ANONYMITY DIRECTION NOT MADE)**

Appellants

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellants: Mr P Corben, Counsel instructed by Legacy Law Solicitors  
For the Respondent: Ms R Pettersen, Home Office Presenting Officer

**DECISION AND REASONS**

1. The first Appellant is a Nigerian citizen, and the second her adult daughter, also a Nigerian citizen. They appeal the decision of First-tier Tribunal Judge

Rowlands, promulgated on 21<sup>st</sup> August 2014, in which he dismissed their appeals against the Respondent's refusal to issue them with residence cards as confirmation of a right of residence as the spouse and family member of a Slovakian national.

2. The Appellants assert they arrived in the United Kingdom from Nigeria in 2009, on visit visas, at a time when the First Appellant was married to a Nigerian citizen in Nigeria. They claimed asylum on the basis of an asserted fear of forced circumcision of the Second Appellant. The application was refused but the Appellants did not leave the United Kingdom.
3. On 13<sup>th</sup> May 2013 the Appellants sought to regularise their position here on the basis of the First Appellant's marriage of 25<sup>th</sup> April 2013, in the United Kingdom, to the sponsoring EEA Slovakian national. The application was refused on the basis that the First Appellant is not a spouse of an EEA national with reference to Regulation 2 of the Immigration (European Economic Area) Regulations 2006 which states that, "spouse" does not include a party to a marriage of convenience. The Respondent also found that the Appellants did not come within Appendix FM and paragraph 276ADE of the Immigration Rules in the context of their family and private life to the point that the decision did not breach Article 8 ECHR.
4. The Appellants appealed through representatives on grounds that the marriage was genuine so that the Appellants were entitled to residence cards, and, as the refusals were not in accordance with the regulations, they breached Article 8,. Further that the emotional trauma and frustration caused by the refusal of the application and requiring the Appellant's to return to Nigeria amounted inhuman and degrading treatment contrary to Article 3.
5. The determination of the First-tier Tribunal reveals that the judge identified the core issue as whether or not the first Appellant is in a durable subsisting relationship and that the marriage is genuine (paragraph 19 refers). The judge concluded, having heard the evidence, that he was not satisfied that the couple are a genuine married couple who are in a durable subsisting marriage.
6. The Grounds of Appeal assert that the judge fell into error of law because the appeal was dismissed under the Immigration Rules, when the proper framework was the EEA Regulations. I find no merit in the submission on this point. The judge correctly identifies at paragraph 1 that the decision under appeal was a refusal to issue a residence card as confirmation of a right of residence under the European Community law as a spouse, correctly identifies at paragraph 17 that the appeal is brought under the EEA Regulations. The judge concludes his final paragraph by reference to a residence card, and reading the decision as a whole he has addressed issues relevant to Regulation 2 of the EEA Regulations. In the context of

the whole the judge's references to the Immigration Rules amounts to little more than infelicitous wording.

7. The grounds suggest that the judge fell into error in suggesting that the couple should not have been allowed to marry or were not in fact married in the United Kingdom. The assertion that the judge found that the Appellant should not have been allowed to marry is not made out on a reading of the determination. The judge expresses surprise that the registrar was satisfied that the Sponsor "understood a single word of what was going on". The Appellant's case was that she and her husband, contrary to the Respondent's view, were able to communicate in English. The matter of communication between the couple was a live dispute before the judge about which evidence was led and upon which he was entitled to reach a conclusion. The comments made are in that context, and were open to the judge on the evidence. A full reading of the decision also shows that the judge clearly understood that the couple had married in the United Kingdom and so the challenge to the decision on the basis that the judge mistakenly thought the couple had not married are simply wrong. It is completely apparent that the judge understood that he was assessing the character and quality of the UK marriage.
8. The grounds assert that the judge had no evidence upon which to conclude that the Respondent's interview of the Appellant and her partner was not rushed. In this context the grounds again misread the judge's decision. The judge based his conclusions on what the parties to the marriage told him at the oral hearing. At paragraph 21 the judge states,  

*"Whatever the Appellant may argue about the bullish nature of the interview it was perfectly clear that the Appellant and her Sponsor were not rushed or hassled in any way when giving evidence before me."*
9. Finally the grounds assert that in failing to make a separate decision in respect of the Ground of Appeal referencing Article 8, the judge has fallen into error. I have set out above the basis of the Grounds of Appeal in respect of Article 8 and it is self-evident that in finding that the family relationship relied upon was not subsisting, and no other issues being raised in the grounds, the Article 8 Ground of Appeal could have no possibility of success. In reality this was a case where the Grounds of Appeal stood or fell as one.
10. Before me Mr Corben improved upon the grounds by reliance on the fact that the judge failed to expressly make a finding that the marriage was a marriage of convenience or to set out a reasoning which referenced the case of Papajorgi (EEA spouse - marriage of convenience) Greece [2012] UKUT 38 (IAC) to the point that the head note of that case sets out,
  - (i) There is no burden at the outset of an application on a claimant to demonstrate that a marriage to an EEA national is not one of convenience.

(ii) IS (marriages of convenience) Serbia [2008] UKAIT 31 establishes only that there is an evidential burden on the claimant to address evidence justifying reasonable suspicion that the marriage is entered into for the predominant purpose of securing residence rights.

(iii) The guidance of the EU Commission is noted and appended.

11. Whilst I agree that the judge may well have benefited from a consideration of the case of Papajorgi, and it is plain that neither representative brought that case to his attention, the reality is that the criticisms levelled amount to no more than the legalistic forensic dissection of a decision which, whilst poorly worded in places, clearly engaged with the evidence of the issue as to whether or not the marriage was one of convenience. The grounds fail to appreciate that credibility was at the heart of this appeal. The Appellant had a poor immigration history, the judge plainly found that her claims of the couple having a relationship which had endured since 2011, and who had undergone a proxy marriage because of commitment to each other in the face of an inability to marry in the United Kingdom because of the Appellant's immigration problems, was not made out. The judge states at paragraph 22,

*“One thing which was abundantly clear from the evidence given by the husband was that he had no comprehension whatsoever of the nature [of] their proxy marriage which he actually described as “her” marriage. He gave conflicting evidence as to what they were doing when the marriage was taking place and I believe the truth is that he just simply had no idea that it was taking place at all, let alone that her family were representing them in Nigeria. I am not satisfied that the proxy marriage was properly conducted in any kind of way in Nigeria which leads me to conclude that he had nothing to do with it and she has simply arranged this marriage and documentation in order to try and prove that she was initially married to her husband for the purposes of her stay in the United Kingdom.*

12. This was not a case where the judge can be said to have fallen foul of the case of Papajorgi by expecting the Appellant to prove from the offset that this was not a marriage of convenience. It is quite clear that the judge found that the reasons put forward by the Respondent for asserting that the First Appellant was not the “spouse” were sufficient to meet the burden on the Respondent so that the issue was properly put in issue before him.

13. In Papajorgi Mr Justice Blake concludes at paragraph 39 that where the issue is raised in an appeal the question for the judge will be,

*“In the light of the totality of the information before me, including the assessment of the claimant's answers and any information provided, am I satisfied that it is more probable than not this is a marriage of convenience?”*

14. In the instant appeal the judge concludes at paragraph 23,

*“They gave conflicting answers in interview on subjects like the rent that he was paying in Bolton and other matters and also at the hearing they gave conflicting evidence about what had happened on the Sunday before in particular about when he had left to go back to Bolton. On the basis of the evidence that was given and the interviews that have taken place I am not at all satisfied that these two are a genuine married couple who are in a durable subsisting marriage.”*

15. In contrast with the case of Papajorgi where Mr Justice Blake noted that, “from first to last” the relationship never had any appearance remotely suggesting that the marriage was one of convenience, the background to this case was entirely different. In short, whilst it is arguable that the judge’s conclusions may have been more clearly expressed as a positive conclusion to the point that on balance he found it more probable than not that the marriage was one of convenience, it is clear that the expression in the negative, to the point that he was not satisfied “that these two are a genuine married couple who are in a durable subsisting marriage” is no more than an alternative expression of the same point. The Appellant can be in no doubt from reading this determination that the judge’s conclusion is that her UK marriage is a sham organised by her in order to obtain an immigration benefit, and that the judge has concluded that to be the position to the standard of the balance of probabilities.
16. In the round, all of the criticisms of the determination amount to no more than criticisms of form rather than substance.

### **Decision**

17. The decision of the First-tier Tribunal reveals no material error of law requiring it to be set aside and the decision dismissing the Appellant’s appeal stands.
18. No anonymity direction is made; none having been made previously and none being requested before me.

Signed

Date

Deputy Upper Tribunal Judge Davidge

### **TO THE RESPONDENT FEE AWARD**

I have dismissed the appeal and therefore there can be no fee award.

Signed

Date

Deputy Upper Tribunal Judge Davidge