



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/1999

THE IMMIGRATION ACTS

Heard at: Field House
On 20 August 2015

Decision and Reasons Promulgated
On 02 October 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE MAILER

Between

MRS PORTIA ESHUN OTABIE
(NO ANONYMITY DIRECTION MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation

For the Appellant: Mr J Walsh, counsel (instructed by Graceland Solicitors)
For the Respondent: Ms J Isherwood, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a national of Ghana, born on 19 August 1993. Her appeal against the respondent's decision dated 22 April 2014 to refuse to issue her a residence under Regulation 26 of the Immigration (EEA) Regulations 2006 ("the 2006 Regulations") as a family member of an EEA National exercising Treaty rights in the UK, was dismissed by the First-tier Tribunal Judge in a decision promulgated on 9 February 2015.
2. The appellant had failed to discharge the burden of proof that her marriage was not one of convenience. There were some inconsistencies in the evidence, some of which were not reconciled by the mere claim that the EEA national's parents were hostile to the relationship [28]. The Judge found that the appellant had failed to show that the marriage was not one of convenience [34].
3. On 14 April 2015, First-tier Tribunal Judge Simpson granted the appellant permission to appeal on the basis that it was arguable that the Judge had overlooked documentary

evidence supporting the appellant's claim to have lived at [] with her sponsor.

4. On 3 July 2015, the Upper Tribunal found on error of law in that the Judge had not properly engaged with the potential significance of evidence produced which tended to show that the appellant and her husband had been living together at []. Nor did the Judge assess or evaluate the potential significance of their detailed awareness of their day to day activities with each other. The decision was set aside. This is the re-hearing.
5. The appellant had applied under Regulation 7(1) (a) of the 2006 Regulations for the issue of a residence card as the family member of an Italian national, Achina Seth Collins.
6. It has not been disputed that her husband has been employed at all relevant times and that he has been exercising Treaty rights. He produced copies of his payslips from 16 January 2014 until 2 July 2015. He has also provided a copy of his P60 end of year certificate for the tax year to 5 April 2015.
7. It is common ground that the appellant's immigration background is as follows. She entered the UK in July 2013 as a visitor. Her sponsor proposed to her during this visit. She received advice from her solicitors and gave notice of intention to marry her sponsor. She then returned to Italy on 13 August 2013 and returned to the UK on 14 September 2013. She was arrested at the wedding ceremony on 16 September 2013. She was granted temporary release and she and her sponsor subsequently married on 9 October 2013. She then submitted an application under the Regulations which contained evidence of an address as their residence [26].
8. Six months later, Immigration Officers attended that address. When questioned by the officials the sponsor's parents denied knowledge of the marriage and appeared to know little about the appellant, despite her claim in oral evidence that she had known her husband since childhood and that his parents knew her mother [26].
9. The appellant claimed that at the time of the visit, she and her husband had been living together at a different address. There was no suggestion in her evidence that this information was given to the immigration officers. Instead, his parents said that their son had continued to live at their home. Accordingly, the Judge found that this was 'reasonable evidence' entitling the respondent to suspect that the marriage was not genuine, but one of convenience [26].
10. Mr Walsh did not dispute that the respondent had been entitled to have an initial suspicion concerning the genuineness of their marriage, having regard to the home visit of the officers to the address which they had for the appellant and her husband. It was however contended that the appellant met the evidential burden addressing those concerns.

The appellant's case

11. The appellant attended the hearing on the 20 August 2015 and gave evidence. At the outset, Mr Walsh produced the original payslips of the appellant's husband copies of which are found at pages 27–54 of the bundle. This he said was to demonstrate that the husband's address on those payslips was []. However, it is evident from the bundle itself that the copies of the payslips do show that address.
12. Ms Isherwood was given the opportunity to examine the original payslips. I also perused them. At the end of the hearing they were handed back to the appellant's husband.
13. The appellant adopted her witness statement dated 14 October 2014 (pages 1–7).
14. She is a Ghanaian national. She was born in Ghana on 19 August 1993. She was taken to Italy by her parents when she was ten years old where she was educated. She was granted indefinite leave in Italy and acquired that status automatically as soon as she “clocked” 18 years. She speaks fluent Italian. She also speaks English, which is the language she used when giving her evidence. She is completely fluent.
15. She had known her husband, Mr Seth Achina, from the time they were growing up as children in Italy. They then lost contact in 2009 when Seth relocated to the UK.
16. She met him again in 2011 when he came to Italy on holiday. They started a relationship. This flourished and her husband returned to the UK at the end of his holiday. They maintained constant communication after that. He visited Italy at every opportunity to see her.
17. It was agreed that she should visit him in the UK in 2013. Their “union” was very strong and they were really looking to get married. He had not yet proposed and they continued to date each other.
18. She submitted an application to visit her husband in the UK in 2013 which was granted from 23 June 2013 until 24 December 2013. She visited him in the UK on 14 July 2013 and departed on 13 August 2013.
19. During that first visit, her husband proposed to her on 20 July 2013. She agreed to marry him. He then sought legal advice from solicitors on whether or not she could marry him in the UK. He was advised that it was possible and that she could then apply to vary her leave to enter the UK after their marriage.
20. Her husband rang Croydon Council and explained the situation. It was confirmed they could get married in the UK. She claimed that they have a record of that conversation with the Council. During her cross examination she said that the record of the conversation is still on her husband's telephone. When her husband was cross examined Ms Isherwood did not require him to produce it.
21. They then gave notice of marriage at Croydon Council prior to her departure from the UK.

22. She came to the UK on 14 September 2013 to marry her husband at Croydon Registry scheduled on 16 September 2013. She was arrested and detained on an allegation of deception which included the failure to provide information to the UKBA regarding her private and family life.
23. She was interviewed under PACE and was informed that she was arrested because she had tried to marry “with a visitor’s visa”. She had not informed immigration at the airport that she was coming to marry her husband. She informed the UKBA that they had sought legal advice and had checked with the local Council and ‘got the go ahead’. She was then taken to a removal centre to be removed to Italy on 21 September 2013.
24. Her husband then instructed her current solicitors. A judicial review application challenging the legality of her removal resulted in the removal directions being cancelled. She was released to go home to her husband.
25. They then returned to the Croydon marriage registry and were married on 9 October 2013. They started living together as a family at her in laws’ at []. She eventually moved out because they refused to consent to the marriage. That was in November 2013. Her husband rented a room for her which was about 5 minutes from her in laws’ address.
26. Her husband resided with her for three nights a week and when he did not sleep in her room he would leave around midnight and walk home. That continued until they rented “a better apartment” which is the address at [].
27. She submitted her application for a residence card the week after the marriage.
28. She was also granted a right to work after it was acknowledged by the Home Office in October 2013 that her application was valid. A certificate of application was issued to her. She applied for a national insurance number and obtained employment at the Woolwich branch of MacDonal’s where she has been employed ever since.
29. She was told by her solicitors to attend a scheduled marriage interview with her husband at Liverpool on 12 March 2014. She was looking forward to attending. However, the Home Office cancelled the interview as a result of the non-availability of an interpreter.
30. On 22 April 2014, immigration officers attended the address at her in laws’. Her husband however was with her at their rented accommodation, some 5 minutes away. Her in laws did not consent to the marriage as they believed that they were too young to enter into a marriage.
31. They did not receive another interview date from the Home Office but her application was refused.
32. The report of the Enforcement Team relating to a visit conducted by the South London Immigration Compliance and Enforcement Team dated 22 April 2014 was produced. The team gained entrance to her parents in laws’ property at around 6.40am.

33. The appellant's husband was not present. The two occupants (her in laws) knew of the "subject" but stated that she did not live at that address. They confirmed that their son "was friends" with the female and although they stated that the son lived in the house, he was not home at the time of the visit.
34. When they stated that they wanted to speak to the appellant and their son about the marriage, they both laughed and indicated that they knew nothing of it.
35. Her mother in law was questioned about the relationship. She said that she had known the appellant for around one year and that she believed that the pair might have met in Italy. However, she was evasive. She stated that she believed that the appellant worked at a MacDonald's restaurant but was not sure of its location.
36. That is the full report.
37. The appellant said that her husband studied at the University of East London and also works part time at a MacDonald's 'at another address'.
38. They rented their accommodation at [] on 23 July 2014 and have resided there.
39. In her oral evidence, she said that she still lives at that address. However, they are about to move "in the next few days" to an address in Rochester. She explained that the current address is a studio apartment. There is more ample accommodation in Rochester. She has not seen her in laws for about a year.
40. In cross-examination, she claimed, as noted above, that the report from Croydon Council referred to at paragraph 8 of her statement was on her husband's phone. She also said that she gave this to their solicitors.
41. She was referred to a copy of the tenancy agreement for []. This is their assured shorthold tenancy agreement dated 11 June 2014 in respect of []. The term commenced on 23 June 2014 and ends on 3 November 2014.
42. She said that there is no other written agreement. There is no other documentary evidence showing that they both live at that address. The bills are in her husband's name only. The utility costs are part of the rental agreement. At paragraphs 23 and 24 of the tenancy agreement, it is recorded that the landlord is responsible for payment of various utilities and other charges. The tenant is responsible for charges regarding internet, cable, telephone and the like.
43. The rent is paid by cash which is given directly to the landlord. They do everything "50-50." She gets half from her wages. Her husband has a Barclays account. He has also opened a Lloyds account in his name which she uses. Her wages are paid to his Lloyds account by her employer. From the evidence produced it appears that there are two Lloyds accounts in her husband's name, one of which is a savings account and the other a

Classic account. There are regular and frequent transfers between those two accounts. The sponsor did not produce his Barclays account when he later gave evidence.

44. The appellant works at the Woolwich branch of MacDonald's and her husband at another. She was not working during the currency of her visit visa. When she applied for her residence card she was given written permission to work. I was informed by Mr Walsh that the application was made on 16 October 2013 and she began working at MacDonald's after she made the application.
45. She has a Lloyds bank card which she uses to access cash. She produced the card. She was referred to page 57, which contains a Lloyds bank credit card statement dated 1 October 2014. She said she takes money using the debit card that she produced. The card she produced when giving evidence is a Lloyds visa debit card with the account number given. The details of the card are shown at page 73 of the bundle. Her husband has an E Savings account with Lloyds. His statements have been produced for the period up to and including June 2015. The address where the account is sent is their current address at [].
46. She was taken to page 67 showing a transfer of £352 from the savings account to her husband's other Lloyds account. There are a number of transfers into that account. There are also transfers into the savings account from her husband's Classic account. She said that the monies transferred out of the savings account were used to pay the rent. She was referred to the various transfers into her husband's Barclays account, said to be "students additions".
47. She claimed that she funded her husband's driving lessons.
48. She was cross-examined on the photographs produced. She accepted that most of the photos are "selfies." She was questioned about what celebrations they had for their first wedding anniversary. Friends came to their house. They produced a cake, said to appear on the photograph which she identified at page 194. The friends took photographs of them. That was not a selfie. Her husband gave her flowers and a card. She also gave him a card.
49. She was asked how they celebrated her birthday, which coincided with the day prior to the hearing on 20 August 2015 – the appellant was born on 19 August 1993. She said they went "last night" to their friend's house to celebrate her birthday. She produced colour photographs of the celebration as well as photographs of the celebration of her birthday in 2014.
50. She lives with her husband at [] which is a studio flat. They intend moving to []. This is a larger apartment which has a separate bedroom.
51. Her family has not been to see them. She speaks to them each day. They know her husband. Her mother did not come to the wedding because she did not have an Italian passport at the time.

52. Her husband speaks to her family in Italy. That is when she calls her mother. Her parents however are divorced. She has not seen her husband's parents for almost a year. Her husband speaks to his family about once a week or so.
53. She was asked when he last saw his family when he had to have the MOT test for his car. He went to his father's house as his father stated that he knew a place where they could "do it cheaper for him." He has a fairly decent relationship with his family.
54. She said her husband did tell his parents about the wedding and that they would be marrying. They said they were too young. Her mother said that she would not come to the wedding.
55. She has a relationship with her husband's sisters and sees them. She went to the cinema with his 'little sister' last month. She produced a photograph of the occasion. They do not attend family gatherings. Her husband has cousins in Bedford.
56. They celebrated her birthday party in 2014 at her husband's parents' house as his parents were in Ghana at the time.
57. When Ms Isherwood put to her that the immigration officer's report stated that his mother did not know about the marriage, she said that she did. She refused to come to the wedding. She knew about the marriage. When asked why she would dispute it, she said it was because his mother was against the marriage.
58. She was referred to paragraph 19 of her husband's witness statement where he states that his mother was not supportive. As a result, they chose to keep them in the dark about the marriage. That is why they could not confirm that he and the appellant are married. He claimed that they told her about their application.
59. It was put to her that she has entered into a marriage of convenience. That is not true. They went against everyone to be together. This is what they wanted. They remain happily married.
60. She was asked whether her intention was to study in the UK. She said if she can stay, she will complete a course. She had not entered with that visa because she wanted to come and see her husband. She did not marry him in order to study. She had completed her education in Italy in 2013.
61. In re-examination, she was asked whether there was any evidence of payments to the landlord in cash. She referred to page 108, where there are several receipts during 2014 and up to April 2015 showing that the landlord received £700 either from the appellant or from her husband, or on occasion from both (as shown in receipt number 11, dated 23.10.2014).
62. Her mother has met her husband in Italy. When he went there on one occasion he stayed at her house.

63. With regard to the conversation with the immigration officer about her wish to study, she told him that that they did not have enough money for a student visa.
64. She was taken to page 164 which contains a photograph which she identified of her and her best friend, Christabel, a witness. The photograph at p207 is of Christabel and Jeff, who is Christabel's husband.
65. Mr Seth Collins Achina Techie Menson attended the hearing and gave evidence. He adopted his witness statement signed and dated on 20 October 2014.
66. He is an Italian national who came to the UK with his parents in June 2009. He has lived here ever since. He is in the second year of a three year course at university.
67. He met the appellant in Italy when they were small. The rest of their common history as set out in the appellant's statement is confirmed by him.
68. When their marriage scheduled for 16 September 2013 started, UKBA officers and police interrupted it. The appellant was arrested. He was also interrogated. It was contended that they were engaged in a sham marriage.
69. After the appellant's release, they got married on 9 October 2013. He confirms that they had lived together at his parents' address.
70. They refused to keep his parents involved or informed as to their relationship and their marriage. They were not impressed with the relationship. His wife in due course moved out of the parents' house in about November 2013 and went to live in a shared apartment. He frequently visited her at that address.
71. They obtained their own rented apartment in July 2014 after their first scheduled interview was cancelled. They were not given a subsequent date. When the officers came to his parents' house, they were not aware of the marriage. His mother was not supportive when they made their intentions to get married known to her. He thus chose to keep them in the dark about their marriage.
72. In his oral evidence, he said that they would be moving in on the following Sunday to their apartment in Rochester.
73. In cross examination he said he had problems with his parents in the past. Sometimes he talked to them on the phone and visits them. The appellant does not talk to them.
74. He last saw his family a week ago, on Monday. He went because he wanted to do his MOT and his father knew a place where it was cheaper, so he showed him the address.
75. He told his family that he wanted to get married when the appellant went back to Italy in August 2013.

76. They do not attend any family gatherings with his parents. He has an uncle in the UK who lives in Milton Keynes. His wife has not seen him. She has not had contact with him.
77. He was questioned about their wedding anniversary. A friend brought a cake as a surprise at their flat. He gave his wife a card and she gave him one as well.
78. When asked about his wife's birthday in 2014, he said that a surprise party was arranged at his parents' house where he invited friends, Christabel and Jeff.
79. When the appellant first came to the UK, she intended to visit him. He proposed to her on that occasion.
80. He was asked about his wife's intention to study in the UK. She was in Italy in her final year. He asked her to study here. She did not want to leave her family. He did not discuss anything about the financing of her studying. He was aware she could not afford to get the student visa. That is not why they married.
81. They pay the rent by cash – £700 a month. They each usually contribute £350. In the last few months her shifts have decreased. Some months she sends him money to his account and sometimes it is withdrawn from a cash machine. They 'put it together'. He has a Barclays account as well as two Lloyds accounts.
82. He opened one of the Lloyds accounts for the appellant. He also has a Barclays credit card account which she uses. She has no account in her own name. The actual card is in her name.
83. It was put to him that there is no evidence of a bank account in both their names. The card shows another address. He said that the bank did not agree to change the address to include her. She does not use the credit card.
84. Her wages are paid into the Lloyds account. They would not however allow her her own account as she does not have a passport. The Barclays credit card is in her own name. She transfers money into his Barclays account for bills and shopping.
85. It was put to him that the documentary evidence is all in his name. He accepts that it is in his name. He said it is difficult because she needs a passport in order to open a bank account.
86. In re-examination, he said that the credit card address is at []. That is the place he used to live with his wife for a short period. That is where his parents live. This was for about two months.
87. Ms Christabel Bray attended the hearing and gave evidence. She adopted her witness statement dated 15 July 2015. She is a friend of the appellant. She has known her since she was 10 years old. She met her whilst living in Italy. She came to the UK in 2009. She remained in contact with the appellant.

88. In 2011 the appellant told her about her relationship with her husband. She was happy for her.
89. In 2013, the appellant contacted her and she went to see her. She informed her that her husband had proposed and they were planning to get married. The plan was that she would attend the wedding but she could not as it was her first day at university.
90. They could not celebrate the wedding after that as the appellant was arrested. However, she and her husband surprised the appellant and her husband on their wedding anniversary with a party at their house.
91. She knew that the appellant was living with her husband's family and they celebrated her birthday at his parents' house. His parents had travelled to Ghana for a month.
92. The appellant moved out to shared accommodation "due to some family issues". She visited her in that accommodation.
93. She assisted the appellant in searching for suitable accommodation. She finally secured accommodation when she and her husband moved in together.
94. She and her husband have visited them at their house on several occasions. They also celebrated Christmas together as a couple at their house.
95. She asserts that their relationship is genuine and that they are a loving couple. She confirmed that the photograph at page 164 shows her.
96. In cross examination, she said she became aware of their relationship in roughly 2011. She was in the UK and was in contact with the appellant. She did not discuss her coming to the UK. Nor did she discuss the options of her coming to the UK. She said she was about to come for a holiday. She came because she wanted to visit Seth and the family and was to stay at her husband's house.
97. The appellant told her that her husband had proposed to her. She then realised that she would stay. She did not discuss with her 'doing any studying in the UK'.
98. She sees the appellant every week. She is currently on maternity leave. She worked at a care home.
99. Mr Jeff Okanta attended the hearing and gave evidence. He adopted his witness statement dated 15 July 2015. He knows the appellant through his friend, Seth, as well as through his wife, Christabel. He met Seth in 2010 in the UK. His wife told him that Seth was getting married to her friend, the appellant.
100. Once he and Christabel got married, the appellant and Seth became close as couples. They would attend each others' house. They would occasionally go to restaurants and cinemas together.

101. He and his wife surprised the appellant and Seth on their wedding anniversary with a party at their house.
102. He knew that the appellant was living in Seth's family house as they celebrated her birthday there when his parents travelled to Ghana for a month. They also celebrated Christmas together as couples at their house.
103. He attests to the genuineness of their relationship.
104. There was no cross examination.

Submissions

105. Ms Isherwood relied on the reasons for refusal. She submitted that this is a marriage of convenience. The evidence shows legitimate suspicions. The burden then shifts.
106. She submitted that the tenancy agreement ran out; she accepted however that it could be 'a rolling one'.
107. The vast majority of documents bar the invoice sent to the appellant at [] on 2 April 2015 (p122) are in the husband's name.
108. There was conflicting evidence as to whether her husband's parents were aware of the wedding. The appellant claimed that she did not know where all his relatives were in the UK.
109. There was nothing clear about the financial circumstances of this couple. Both the Lloyds accounts are in his own name. It was claimed that the savings account was used for her to pay her wages. No wage slips, however, were produced. Her husband also claimed that there was a Barclays account in joint names. There was no evidence of the Barclays account. His wages are paid into that account.
110. The appellant is not shown to be connected to the current address. Nor are basic facts clear. It is not known whether his parents became aware of the marriage or not. This is to be compared with the mother's evidence in the report that she knew nothing of it. Their evidence was that they did not keep the parents informed.
111. She submitted that the intention of the appellant initially was to study.
112. The vast majority of the photos are "selfies." There is no statement from any of the appellant's family members. Accordingly no clear picture relating to the current circumstances is available.
113. On behalf of the appellant, Mr Walsh referred to the immigration officer's report dated 22 April 2014. From that report it is clear that the husband's mother said she had heard of the appellant and believed she was working at a MacDonald's restaurant. She confirmed that she had known the appellant for around a year and accepted that the pair might have

met in Italy. Accordingly, there was not a complete denial from the appellant's parents regarding the relationship between the appellant and their son. At that stage, the appellant had moved out to [] in July 2014.

114. There is moreover evidence linking the appellant to []. With regard to the alleged "inconsistencies" in relation to the relatives in the UK, the appellant did state that he had a relative "in Bedford" or Milton Keynes. This was a distant relative.
115. There were questions put during cross examination relating to their knowledge of how anniversaries and birthdays were spent. They were completely consistent in relation to that. The evidence relating to the visit to his parents last week with regard to the MOT was telling and is a pointer to the genuineness and subsistence of the relationship.
116. With regard to the two witnesses called on the appellant's behalf, it was not even put to them whether they knew about the relationship for some time. Christabel stated that it was from 2011. Their evidence is consistent with a genuine relationship. They were prepared to come along to give this evidence and there is weighty corroboration of the appellant's case.
117. Insofar as the bank statements are concerned, these are produced for the purpose of showing that the husband is linked to []. They do confirm that. The Lloyds bank accounts are addressed to [] – pages 71 and 79.
118. The evidence must be looked at as a whole. It is particularly significant that two years have elapsed since the wedding. They are still living together and intend to move to another property. The relationship is accordingly genuine.

Assessment

119. I found the evidence of both the appellant and her husband to be essentially credible. I have had regard to Ms Isherwood's submissions regarding the alleged inconsistencies revealed by her cross examination, particularly relating to the husband's bank statements.
120. I have also had regard to a substantial amount of agreement and consistency revealed in many of the questions asked during cross examination. The appellant gave her evidence during which no witness remained in court. When her husband and her two witnesses came to give evidence, there had been no opportunity for them to speak or discuss the case. Each witness was called as soon as the evidence of one of them was completed. There was no break following the completion of their evidence
121. I do accept Ms Isherwood's contention that there is an absence of any coherent evidence relating to the payment of her wages into any of her husband's accounts. The husband has not produced all of his accounts. There was also evidence from the husband that his wife has had a credit card issued by Barclays Bank which she uses.

122. On the other hand it is evident that there is a substantial amount of transfers between the appellant's husband's Lloyds account. There is also evidence that the appellant has use of a Lloyds debit card which she produced during the hearing.
123. I have had regard to the Tribunal's decision in Papajorgji (EEA Spouse - marriage of convenience) Greece [2012] UKUT 00038 (IAC). There is no burden on the claimant in an application for a family permit to establish that she was not party to a marriage of convenience unless the circumstances known to the decision maker give reasonable ground for suspecting that this was the case. Absent such a basis for suspicion, the application should be granted without more on production of the documents set out in Article 10 of the Directive. Where there is such suspicion, the matter requires further investigation and the claimant should be invited to respond to the basis of suspicion by producing evidential material to dispel it.
124. A marriage of convenience in this context is a marriage contracted for the sole or decisive purpose of gaining admission to the host state.
125. I have assessed the evidence of the appellant and her husband relating to the genuineness of their marriage as part of the evidence as a whole including documentary evidence.
126. That includes the tenancy agreement (page 109) relating to []. That agreement was entered into on 11 June 2014. Although it was stated to end on 23 November 2014. I find that the tenancy has continued since then up until the present. In that respect, I have had regard to the numerous receipts for the period 2014 and 2015 to which I have already referred. These are set out at page 108 of the bundle and show the payment each month of the sum of £700 received either from the appellant, her husband or both. There has been no challenge to the authenticity of those receipts.
127. I have had regard to other documents including the invoice sent to the appellant at [] on 2 April 2015 from a beauty parlour. There is also reference to a delivery from Amazon to the appellant at that address, albeit that the date is not shown in the copy of the exhibit produced. There is a letter sent to the appellant at that address from the Electoral Registration Officer in November 2014 and a further letter to that address on 12 December 2014. There is a letter from the Senior Electoral Administrator to the appellant at that address on 14 November 2014 in which she is invited to complete the application form.
128. I have also had regard to the evidence produced of letters and statements sent to the appellant's husband at that address during 2014 and 2015. That includes his wage slips as well as bank account statements which are enclosed from pages 55 to 107. There are other documents confirming his address, including his counterpart driving licence (page 120). This constituted a provisional entitlement from 8 June 2015. There are other letters sent to the appellant's husband at pages 124-132. There is a letter dated 27 September 2014 from Sky, between September 2014 and April 2015 (pages 139-141) at that address.

129. There are also letters from Wyndham Rewards sent to the appellant at that address dated 12 September 2014 and copies of an incentive award card for him dated 3 October 2014 (142–144). There is an enrolment notice relating to a pension scheme sent to him at that address on 30 November 2014 (page 145). There is also a letter from Experian sent to him at that address on 18 December 2014.
130. I have also considered the evidence of the appellant's witnesses. I found their evidence to be straightforward and credible. In any event, Mr Okanta was not challenged or cross examined at all.
131. As noted by Mr Walsh during his submissions, the appellant and her husband were very properly tested on matters relating to personal and intimate details which could be expected to be known and shared by persons living together in the marriage.
132. Apart from the fact that each witness confirmed anniversaries and what they did on Christmas, including who attended the social gatherings and birthdays, there was also the telling evidence relating to the visit by the appellant's husband to his father's home about a week earlier in connection with his MOT renewal.
133. There was also the evidence as to what had happened the day before the hearing, which happened to be the birth date of the appellant. The nature of the celebration which took place as well as those who attended that social gathering were identified by the appellant and her husband. That had not been a part of their written evidence produced.
134. I have also had regard to the fact that their initial attempt to be married was thwarted by the authorities at the marriage ceremony where the appellant was in fact arrested and detained. They nevertheless decided to get married shortly after that. I have also had regard to the fact that the appellant was looking forward to being interviewed by the Home Office authorities in Liverpool. It is through no fault of their own that that meeting was cancelled. However, they were not afforded an opportunity to attend a further interview.
135. I direct myself according to the approach endorsed in Papajorgji, supra. Having regard to the evidence as a whole, I am satisfied that the appellant has shown to the required standard that her marriage was not entered into for the sole reason of securing a right to reside in the UK. In particular, I find that there has been continuous cohabitation since their attempt to marry at the Croydon Register office on 16 September 2013. They have now been together and cohabited for over two years.
136. I am accordingly satisfied that the appellant has shown on the balance of probabilities that theirs is a genuine relationship. The marriage undoubtedly provides her with an immigration advantage. However, this does not result in its characterisation as a marriage of convenience. I find that their cohabitation is quite inconsistent with the suggestion that the marriage has been contracted for the sole or decisive purpose of gaining admission to the UK.

137. I accordingly find that the decision of the respondent is not in accordance with the law and the 2006 Regulations.

Notice of Decision

The decision of the First-tier Tribunal involved the making of an error on a point of law. Having set it aside, I re-make the decision allowing the appellant's appeal under the 2006 Regulations.

No anonymity direction is made.

Signed

Dated: 21/9/2015

Deputy Upper Tribunal Judge Mailer