



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

Appeal Number: IA/28700/2014

THE IMMIGRATION ACTS

Heard at Bradford

On 24 July 2015

**Decision & Reasons
Promulgated**

On 22 September 2015

Before

UPPER TRIBUNAL JUDGE CLIVE LANE

Between

**NARCISSE TIBAUT DJEUKAM KOUENKAM
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr T Hussein, instructed by NBS Solicitors

For the Respondent: Mrs R Pettersen, a Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant, Narcisse Tibaut Djeukam Kouenkam, was born on 8 November 1972 and is a male citizen of Cameroon. The appellant claims to have entered the United Kingdom in 2004 legally. In May 2007, he applied for a residence card which was issued to him. That card expired

on 19 September 2012 and, on 18 July 2012, the appellant applied for an extension of the residence card which was refused. He appealed to the First-tier Tribunal but his appeal was dismissed (7 May 2013). His further application in November 2013 for a permanent residence card was also refused. The appellant appealed against that decision to the First-tier Tribunal and the respondent reconsidered the application upon receipt of new evidence. On 24 June 2014, the decision was taken to uphold the decision to refuse to issue the appellant with a permanent residence card. The appellant appealed to the First-tier Tribunal (Judge Birkby) which, in a decision promulgated on 9 January 2015, dismissed the appeal. The appellant now appeals, with permission, to the Upper Tribunal.

2. In essence, there are two grounds of appeal. First, it is asserted that the judge perpetrated an unfairness against the appellant by refusing to adjourn the hearing on 19 December 2014. Judge Birkby had first considered this appeal on 18 November 2014 when he had acknowledged that the “appellant did not have sufficient notice of the assertions [made by the respondent for the first time at that hearing that the appellant’s marriage was one of convenience] and was potentially ill-prepared to deal with the issue.” The appellant asserts that Judge Birkby proceeded with the second hearing without requiring the respondent to provide evidence of a “reasonable suspicion” that the marriage entered into was one of convenience and that such suspicions had only arisen following the cross-examination of the appellant at the December 2014 hearing. The appellant states that there should have been a further adjournment following the cross-examination to enable him to consider the details of the allegation that his marriage was a sham which had only arisen in submissions made by the respondent’s representative following cross-examination. The burden of proving that the marriage was not one of convenience had not fallen upon the appellant given that the details of the respondent’s allegation had arisen so late in the proceedings.
3. The second ground of appeal concerned the failure of the judge to have regard to all the evidence. The judge had concluded that there was no evidence that the appellant and his wife had lived together. The appellant claims that his bundle of documents (in particular, pages 21, 23, 74 and 85) contained evidence of cohabitation. The judge had, therefore, failed to have proper regard to material evidence in reaching his conclusion.
4. I find that the grounds of appeal are without merit. I am satisfied that the judge was aware of the requirement for the respondent to establish a reasonable suspicion that the marriage is one of convenience because he says as much [27]. (The requirement detailed in the Upper Tribunal decision of *IS (Marriage of convenience) Serbia* [2008] UKAIT 31). I find that the judge acted entirely properly by adjourning the hearing in October 2014 because, prior to that hearing, there had not only been no allegation in the present proceedings that the marriage was one of convenience but the respondent had previously issued the appellant with a residence card. To have proceeded with that hearing would, as Judge Birkby acknowledged, would have amounted to a procedural unfairness against the appellant. However, when the matter came back before Judge Birkby

in December 2014 the appellant should have been prepared to deal with the respondent's allegation. The judge does not explain in detail in his decision what the Presenting Officer had said to him in October 2014 regarding the marriage but it is apparent from the decision the Presenting Officer had not simply made bold and unsupported assertions that the marriage was a sham. Indeed, had the appellant and his representatives considered the respondent had made an unsupported assertion then it should have indicated to Judge Birkby that it required the respondent to provide material in support of the allegation prior to the adjourned hearing. There was no suggestion that they did so. To suggest that the appeal should have been further adjourned following cross-examination was to suggest, in effect, that the appellant should have been given the opportunity to go away from court and perfect his evidence and to address any difficulties and anomalies which may have arisen during cross-examination. The appellant was professionally represented at the hearing and his representative should have used the opportunity for re-examination of the appellant. I am not satisfied that the judge has acted unfairly or that he had done so other than in accordance with the law.

5. As regards the second grounds of appeal, I find that this has no merit. The judge made it clear [25] that he had "considered the appellant's evidence together with all the documentation and submissions made." The judge stated again [27] that he had looked at the "totality [of the evidence]" and had considered "the evidence cumulatively ...". I have no reason to believe that the judge had ignored those items of evidence in the appellant's bundle which might have indicated that the couple had cohabited. The judge was not obliged to deal with each and every item of evidence and I find that he has given very clear cogent reasons for concluding that the appellant was not a credible witness that his marriage was not genuine.
6. In the circumstances, this appeal is dismissed.

Notice of Decision

The appeal is dismissed.

No anonymity direction is made.

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

Signed

Date 20 September 2015

Upper Tribunal Judge Clive Lane