



**Upper Tribunal
(Immigration and Asylum Chamber)
IA/39428/2014**

Appeal Number:

THE IMMIGRATION ACTS

Heard at Manchester

Determination

On 5 August 2015

**Promulgated
2015**

On 14 August

Before

UPPER TRIBUNAL JUDGE PLIMMER

Between

**IA
(ANONYMITY DIRECTION MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Bloomer (Counsel)

For the Respondent: Ms Johnstone (Home Office Presenting Officer)

DECISION AND DIRECTIONS

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 I make an anonymity order. Unless the Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the original appellant. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings.

1. The appellant is a citizen of Lithuania and therefore an

EEA citizen. I have anonymised this decision because it refers to private medical issues.

2. The issue before the First-tier Tribunal was whether or not the appellant's marriage is one of convenience. It was agreed before the First-tier Tribunal and before me that the relevant question to be asked is as set out in **Papjorgji (EEA spouse - marriage of convenience) Greece** [2012] UKUT 00038 (IAC): "*n light of the totality of the information before me, including the assessment of the claimant's answers and any information provided, [is it] more probable than not this is a marriage of convenience?*" As recognised in **Miah (interviewer's comments: disclosure: fairness)** [2014] UKUT 515 (IAC) at [12]:

"...an assessment that the marriage was one of convenience is a matter of some moment. It is tantamount to a decision that the marriage was undertaken for improper motives, designed to secure, dishonestly, a status and associated advantages to which the affected person was not legally entitled. This will be a significant blot on the person's immigration history and could operate to his detriment in the future."

3. In a decision dated 2 March 2015 Judge Fisher decided that the appellant's marriage is one of convenience and dismissed her appeal. I must decide whether that decision contains an error of law.

Hearing

4. Mr Bloomer asked me to find that the decision when read as a whole is unclear and insufficiently reasoned. It is difficult to see what weight the Judge attached to the fresh evidence before him and why such evidence was considered insufficient notwithstanding the concerns raised by the appellant's interview. Ms Johnstone asked me to find that the decision sufficiently set out why the Judge was so concerned about the interview and why in these circumstances the appeal was dismissed.

Findings

5. The question before me is whether or not the Judge has provided sufficient reasoning for the appellant to understand why he reached his decision that it is more probable than not that her marriage is one of convenience. I accept that the reasons need not be elaborate, and need not deal with every argument presented or piece of evidence relied upon.

6. Judge Fisher properly reminded himself that the findings of Judge Heynes in his decision dated 23 October 2013 regarding the appellant's husband's appeal should be used as a starting point for his own findings [20]. Judge Heynes highlighted a number of concerns emerging from the interview conducted with the appellant and dismissed the husband's appeal. Judge Fisher then summarised the fresh evidence relied upon by the appellant to support her claim that her marriage is a genuine one. He described this evidence in these terms: "*These are useful and some weight should be given to these*" [22].
7. Judge Fisher then considered the evidence relied upon by the respondent, which remained solely the interview that was available to Judge Heynes. He described this as "*strong and powerful evidence, which supports the assertions [the SSHD has] made*" [23].
8. The next paragraph [24] contains the key to the Judge's reasoning in dismissing the appeal. Unfortunately, the paragraph is poorly drafted and contains a number of confusing and incomplete sentences. I set it out in full.

"In coming to my conclusion relating to the appeal I have found that there were discrepancies which go to the core of the appellant's credibility. The previous Judge rightly found that it was a marriage of convenience previously. Evidence that the appellant has been pregnant twice but unfortunately has miscarried on both occasions. We have no evidence of that the appellant's husband is the father and whilst this is new evidence some weight must be given to it. This does not convince me that this is anything other than a marriage of convenience. We have evidence that they have lived together from the utility bills but this could be an attempt to deceive the authorities by living together and there is no proof of a subsisting relationship again evidence can be produced. Mr Baig gave evidence and believes that they are in a genuine relationship however there is insufficient evidence to persuade me that applying In Papajorgji (EEA spouse - marriage of convenience) Greece [2012] UKUT 00038 (IAC) The Tribunal in Papjorgji made it clear at paragraph 33 that they did not accept there was a burden as such on the Appellant and at paragraph 39 stated "In summary, our understanding is that where the issue is raised in an appeal, the question for the judge will therefore be 'in 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?'".

9. Judge Fisher clearly attached considerable weight to the appellant's answers at her interview and Judge Heynes' findings in relation to that. Having done so Judge Fisher was obliged to make clear factual findings concerning the evidence that had become available and covered the two intervening years since Judge Heynes' decision. Judge Fisher regarded that evidence as useful and said that some weight should be attached to the fresh evidence [22]. The first concern is that this is difficult to reconcile with the Judge's unexplained comment at [24] that "*... there is no proof of a subsisting relationship again evidence can be produced.*". There was of course considerable evidence post-dating Judge Heynes' decision directly relevant to seeking to establish a subsisting relationship between the parties. This included a letter written by a homeopathic consultant explained the affection and support offered by the husband to the appellant over a number of appointments and the appellant's pregnancies. Judge Fisher's reasoning simply fails to explain why the fresh evidence viewed cumulatively was insufficient to outweigh the concerns arising from the interview. It is clear that he regarded the evidence as insufficient but it has not been explained why he regarded it as such, when he described it as useful and that weight should be attached to it.
10. Secondly, there was detailed evidence that the parties had resided together over an extended period of time and at a number of different addresses. This evidence is directly relevant to whether the marriage is a credible one. The evidence is not determinative because of course as the Judge observed the parties might just be living together to support their claim. However the longer the parties live together, and at different addresses the less likely the relationship is a sham. It was therefore important for the Judge to make a clear finding as to whether he accepted that they lived together and for how long. The decision is silent as to this crucial issue.
11. Finally, although the Judge has referred to the appropriate question to be asked as set out in **Papajorgji**, he has failed to answer the question. Had he done so he would have avoided misdirecting himself in law in seeming to require evidence to "*convince*" or "*persuade*" him that the marriage is not one of convenience. The Judge has simply failed to explain why he was satisfied that it is more probable than not that this is a marriage of convenience when all the evidence is

considered in totality.

Remittal

12. In my view the most fair and proportionate way in which to deal with this case having regard to para 7.2 of the relevant *Senior President's Practice Statements* and given the nature and extent of the factual findings to be made is to remit the matter for a de novo hearing in the First-tier Tribunal. As observed in **Miah** an assessment that a marriage is one of convenience is a matter of some moment, and the reassessment of this issue needs to be redone fully and fairly.

Decision

13. The decision of the First-tier Tribunal contains an error of law and is set aside.
14. The appeal is remitted to the First-tier Tribunal for a decision to be re-made.

Directions

(1) The matter shall be listed for the first available date before the First-tier Tribunal. TE: 2 hrs. Lithuanian interpreter required.

(2) Seven days before the hearing the appellant shall file and serve a comprehensive indexed and paginated bundle of all relevant documents and witness statements relied upon.

Signed:

Ms M. Plimmer
Judge of the Upper Tribunal

Date:
6 August 2015