



**Upper Tribunal
(Immigration and Asylum Chamber)
IA/51959/2013**

Appeal No:

THE IMMIGRATION ACTS

**Heard at Field House
Determination promulgated
on 11 December 2014
2015**

on 12 January

Before

DEPUTY UPPER TRIBUNAL JUDGE DIGNEY

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

AGHILES HANAFI CHEHRIT

Respondent

Representation:

For the appellant: Ms Pal, Home Office Presenting Officer
For the respondent: Mr Doerfel

DECISION AND REASONS

1. On 28 May 2013 the respondent made an application for a residence card as confirmation of his right to reside in the United Kingdom as the spouse of an EEA national; in fact a national of Spain. That application was refused on 9 November 2013. The application was refused because the appellant concluded that the marriage was one of convenience. An

appeal against the decision was heard on 6 August 2014 and the appeal was allowed.

2. Permission to appeal was sought on two grounds. The first and the only one on which leave was granted was, in effect, that the judge's conclusion that the marriage was not one of convenience was not properly reasoned. In granting permission, the judge granting it, said:

An arguable error of law has arisen in relation to the extent to which the judge has engaged with the discrepancies raised by the respondent. It is arguable that over reliance has been placed by the judge on the "joint statement". The judge has concluded that the discrepancies were not as to the key matters without providing an adequate analysis to create a foundation for this conclusion.

3. It has to be admitted that the determination is open to criticism. It contains a number of formulaic expressions that are not of a great deal of assistance as they are so clearly formulaic. More significant, however, is the judge's approach to the case, which deals with an application under the Immigration (European Economic Area) Regulations 2006. He deals with the matter under the Immigration Rules but accepts that applications that relate to EEA citizens have to be treated differently and in accordance with EEA law. Whilst it is impossible to be sure as to his jurisprudential approach, one thing is clear. The judge saw the crucial matter that had to be decided was whether the marriage was one of convenience. That is the matter at issue and the judge dealt with it. It follows that his unorthodox approach can be disregarded as he arrived at the correct question.¹ The crux of the matter is whether his conclusion was properly argued.
4. The judge reached his conclusions for a number of reasons. He concluded that the discrepancies were not to key matters. He accepted the reasons given for those discrepancies and he found the evidence given on behalf of the respondent, particularly that of his wife, convincing. He also saw the length of the relationship as a cogent factor. He also relied on the documentary evidence that had been produced. It is often said that the test as to whether a decision passes the test of "being properly reasoned" is whether it enables the losing party to know why they have lost. This decision passes that test; the appellant lost for the reasons set out above. It seems to me that what is being asked for is reasons for reasons. Here it is clear what the reasons behind the decision are and at the heart of those are the fact that the judge believed the respondent and his wife.
5. I have looked carefully at the evidence before the judge and the judge was entitled to reach the conclusion that he did on that evidence. He was

¹ Indeed, the grounds of appeal do not deal with this error. Assuming that the matter had been noticed that was correct as the error was not material for the reasons that I have given.

entitled to give the weight to the joint statement he did, *pace* the judge who granted permission. His conclusions cannot be seen as being in any way perverse or irrational and he was entitled to conclude that the discrepancies related to matters that were not key. I conclude that the judge's conclusions are properly reasoned and contain no error of law.²

6. The grounds argue that the judge's reasoning on article 8 is flawed. Permission to appeal was not granted on this point and the grounds, subject to one matter, do not identify a material error of law. It is arguable, that having allowed the appeal under the EEA regulations it was wrong of the judge to consider article 8. It is fair to say that legal opinion is divided on this point at the current time. However this point was not raised in the grounds of appeal, and in any event, the judge having allowed the appeal on the basis of the EEA relationship, the decision under article 8 makes no difference to the conclusion, the EEA rights being stronger than those under the ECHR.
7. It follows that the original determination did not contain an error of law and the decision shall stand.

The appeal is accordingly dismissed

Designated Judge Digney
7 January 2015
Judge of the Upper Tribunal

² I have obviously provided my own reasons for concluding that the judge's reasoning on the question of the marriage contains no error of law but I would add that I found the argument in the rule 24 response persuasive and well reasoned.