IAC-AH-DP-V1

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/46804/2014

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 21st March 2016	**On 25th April 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

MRS STEPHANIE LAURE FOYA
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr S Nwaekwu (Solicitor)
For the Respondent: Ms A Brocklesby-Weller (HOPO)

DECISION AND REASONS

1. This is an appeal against a decision of First-tier Tribunal Judge G A Black promulgated on 8th July 2015, following a hearing at Taylor House on 23rd June 2015. In the determination, the judge dismissed the appeal of Mrs Stephanie Laure Foye, whereupon the Appellant subsequently applied for, and was granted, permission to appeal to the Upper tribunal, and thus the matter comes before me.

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The Appellant

2. The Appellant is a female citizen of Cameroon and she was born on 8th July 1988. She appealed against the decision of the Respondent dated 19th November 2014, refusing her application as the Sponsor of an EEA national exercising treaty rights in the UK pursuant to the Immigration (EEA) Regulations 2006.

The Appellant's Claim

3. The Appellant's claim is that the Respondent Secretary of State claims to have invited the Appellant on two separate occasions for an interview in Liverpool, but there is no evidence of this and she was entirely justified in not attending. She also claims that her marriage to an EEA national, namely, Samy Panzu, a French national, is entirely genuine and a valid marriage.

The Judge's Findings

4. The judge was satisfied that the Respondent Secretary of State had failed to demonstrate that the Appellant had been invited for an interview at Liverpool on two separate occasions. The judge referred to the relevant case law, and in particular **Papajorgi [2012] UKUT 0038**, which makes it clear that a marriage to an EEA national is prime facie a valid marriage, provided that the Appellant is able to produce a marriage certificate and his or her passport. Thereafter, if there is an issue taken as to the genuineness of the marriage, the burden falls upon the Secretary of State to demonstrate the fact that this is a sham marriage.

5. The judge held that the Respondent had

> "... failed to provide evidence to show that the parties were invited to attend a marriage interview. The lack of evidence in this regard establishes that the Appellant had good reason for not attending the interviews" (see paragraph 12).

6. However, the judge then went on to consider the genuineness of the marriage himself in considerable detail. The judge found that, "there was no evidence to adduce to show that the parties were cohabiting and/had joined finances". Both the Appellant and her sponsoring husband turned up at the hearing. They gave oral evidence. They relied on the material submitted in support of the application arguing that there was evidence of a genuine marriage. However, the judge held that, "I do not find either of the witnesses to be credible as to the genuineness and subsistence of their marriage" although the judge accepted basic details as to the place of meeting, date of marriage, and some factual information.

7. The specific reasons why the judge rejected the appeal were then set out in the determination (see paragraph 15).

8. The appeal was dismissed.

Grounds of Application

9. The grounds of application state that the Respondent had failed to show sufficient grounds for suspecting the marriage to be one of convenience and the judge had erred in holding that there was in the event sufficient reason.

10. On 10th February 2016, permission to appeal was granted by the Upper Tribunal.

11. On 22nd February 2016, a Rule 24 response was entered by the Respondent stating that the judge had given adequate reasons at paragraph 15 for finding that the Appellant was not credible and that, "the judge was entitled to make those findings having heard evidence from both the Appellant and the Sponsor" (see paragraph 3).

Submissions

12. At the hearing before me on 21st March 2016, Mr Nwaekwu submitted that the judge had already ruled in favour of the Appellant (at paragraph 14) by holding that the Appellant and the Sponsor were not invited for interview as contended by the Secretary of State. This being so, the judge was then wrong to go on to refuse the appeal himself on totally new grounds which were not raised originally. Mr Nwaekwu also referred to the case of **Miah**, which requires fairness to be applied with respect to the determination of proceedings.

13. For her part, Ms Brocklesby-Weller handed up documents dated 8th October 2014 which are addressed to the Appellant and begin by saying that,

> "I am writing concerning your client's application for confirmation of your client's right to reside in the United Kingdom on the basis of your client's marriage to an EEA national. In order to consider the matter further, your client and their spouse are requested to attend an interview on 5th November 2015 at 12.00pm".

14. There is also a follow-up letter dated 23rd October 2014 written in the same terms stating that, "we wrote to you on 8th October 2014 to invite them to attend an interview in order to consider their application further". The point about these letters is that there appears not to the Appellant herself but to "Moorhouse Solicitors" in Tottenham, as the solicitors who were acting for the Appellant at the time.

15. There is, in fact, even a third letter dated 7th November 2014 from the Respondent Home Office explaining to Moorhouse Solicitors that two previous letters on 8th October 2014 and 23rd October 2014 were written inviting the Appellant and her spouse for interview and they had no responded to either and that, "as your client has failed to attend these interviews or notify us within the timescale stated, your client's case has

been referred back to a case working team to decide their case on the information provided".

16. Ms Brocklesby-Weller went on to say that paragraph 12 of the determination recognises that correspondence was sent. It is just unfortunate that no Home Office Presenting Officer was in attendance on that date before Judge Black. Once the Appellant and her husband had given oral evidence it was open to the judge to come to the decision that he did. He had specifically referred to a lack of cohabitation between the parties and had not found the Appellant and the Sponsor to be at all credible. He was entitled to that view.

17. In reply Mr Nwaekwu submitted that the three documents that have now been submitted do not form part of the Respondent's bundle. It was wrong to refer to them now. He asked for there to be a finding of an error of law and for this matter to be remitted back to the First-tier Tribunal.

No Error of Law

18. I am satisfied that the making of the decision by the judge do not involve the making of an error on a point of law (see Section 12(1) of the TCEA 2007) such that I should set aside the decision. My reasons are as follows.

19. First, I agree entirely with Mr Nwaekwu that it is wrong for the Respondent Secretary of State to now furnish three separate letters which were purportedly written to Moorhouse Solicitors, but which did not form part of the Respondent's bundle, and a side of which has only been attained during these proceedings. This is indeed fundamentally a "fairness" point and the Appellant and his representatives were entitled to have due notice of this. This is not to say that these three letters were not written to Moorhouse Solicitors and they may have been a failure to communicate the contents of these letters to the Appellant herself. It is not for this Tribunal to decide this matter either way without hearing from Moorhouse Solicitors themselves. What is important, however, is that the judge did not decide this matter in a way that disadvantaged the Appellant. The judge, in fact, found in favour of the Appellant (given that these letters were not produced before the judge with there being no Presenting Officer in attendance). At paragraph 12 of the determination, when the judge held that the "Respondent has therefore failed to provide evidence to show that the parties were invited to attend a marriage interview".

20. Given that no prejudice was caused to the Appellant by the issue of non-attendance at the interview, and given that the matter was in fact resolved in favour of the Appellant, it is clear that the judge on this issue held that the Secretary of State had failed to discharge the burden of proof upon her, which went to showing that this was indeed a marriage of convenience. The Secretary of State had failed to demonstrate this very issue as being proven in her favour.

21. Second, however, the matter did not end there. The judge did thereafter determine the issue himself. He did so because he heard evidence both from the Appellant and the Sponsor. Mr Nwaekwu submits that the judge decided the issue on an entirely different basis with no prior notice to the Appellant or her solicitors. This was incorrect. It was always known to the Appellant and his solicitors that the contention from the Secretary of State's department was that this was a marriage of convenience and the Appellant and the Sponsor attended the hearing precisely on the basis that they would help to discharge any illusions in this respect by showing that their marriage was indeed a genuine and subsisting one. They were unable to show, however, to the requisite standard, that they were cohabiting or had joined finances. It did not end there. The judge made a number of clear findings of fact against the Appellant.

22. First, the judge held that when asked about personal details about how they spent time together including recent social outings, details of friends and the parties' hobbies or interests, the evidence given by the witnesses were inconsistent, with one referring to the past time as being listening to music, and the other that he played basketball and watched television.

23. Second, the Sponsor was unable to give detailed addresses of all the various properties that the parties had lived in over recent years and was only able to name two addresses.

24. Third, the witnesses gave contradictory evidence about the film that the claimant had seen together only a week ago. Whereas one person said that this was an adventure movie the other said this was a horror movie.

25. Finally, the Sponsor said that they had last been out for a meal when they went to the cinema last week but then changed it to say that they had eaten at home and then added that they went out to Nando's, whereas the Appellant said that they had not been out to a restaurant to eat (see paragraph 15).

26. The judge also referred to the fact that there was no independent evidence from friends or relatives to confirm the relationship between the parties. The Appellant's bundle contained two short unsigned witness statements from the Appellant's best friend and the Sponsor's cousin. The judge held that, "these statements were not signed and neither of the witnesses attended" (see paragraph 16).

27. Accordingly, the judge was entitled to come to the findings of fact that he did. The decision in this respect is unassailable.

28. For what it is worth, I may point out that the Sponsor was not in attendance at this hearing, although the Appellant herself was with Mr Nwaekwu.

<u>Notice of Decision</u>

There is no material error of law in the original judge's decision. The determination shall stand.

No anonymity direction is made.

Signed	Date
Deputy Upper Tribunal Judge Juss	21st April 2016