



IAC-FH

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

Appeal Numbers: IA/50335/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 2 February 2016**

**Decision & Reasons Promulgated
On 11 February 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE HUTCHINSON

Between

**MR WASU ALANI OBAYOMI
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr E. Pipi, Counsel, instructed by Jeff-Leonard Solicitors
For the Respondent: Mr P. Duffy, Senior Home Office Presenting Officer

DECISION AND REASONS

1. Mr Wasiu Alani Obayomi is a citizen of Nigeria born on 22 February 1983. In a decision dated 2 December 2014 the respondent refused to issue the appellant with an EEA residence card under the Immigration (European Economic Area) Regulations 2006 (the EEA Regulations), concluding that the marriage was one of convenience. The appellant appealed. First-tier Tribunal Judge N M Paul, in a decision and reasons promulgated on 1 July 2015, dismissed the appellant's appeal under the EEA Regulations. Permission to appeal was granted on the grounds advanced: that the Judge may have erred in paragraph 20 in failing to identify what evidence

was vague and evasive; that the Judge may have erred in linking the appellant's vague and evasive evidence to his failure to call witnesses; that the judge may have erred at paragraph 22 in failing to say what weight he gave to the majority of answers that the couple got right at interview and failing to carry out a fair balancing exercise; that the Judge's conclusion in relation to the appellant receiving his salary through his wife's bank account was unreasonable; that it was unlawful and discriminatory of the Judge to take into account the age gap; that the judge applied the wrong standard of proof.

Grounds 1 and 2

2. The Judge was entitled to find as he did that the appellant's answers in relation to his 'so-called family members in the UK to be vague and, indeed, evasive'. Although it was argued that he failed to identify what evidence was vague and evasive the Judge clearly stated that his evidence about his personal circumstances was 'hard to follow'. In addition the Judge also found that the appellant when 'pressed' in cross-examination 'began to qualify the nature of the family members who were in this country with whom he was directly related'. Therefore the judge in addition to making a general finding, that was open to him, also set out more specific examples of that vague and evasive evidence.
3. Although Mr Pipi was of the view that the Judge erred in linking that vague and evasive evidence to his failure to call witnesses, as the witnesses would not have made the evidence any less vague or evasive, that was to miss the point made by the Judge; Judge Paul noted that the appellant failed to call any evidence from anyone who might have been in a position to give evidence as to the genuineness of the relationship. The relevance of the Judge's findings about the appellant's vague and evasive evidence was that this therefore called into question the appellant's claims about these family members (given that they were not present to give evidence).
4. It is clear that the Judge made findings that were open to him and gave adequate reasons for those findings. It is not the case that these were findings no rational decision maker could reach.

Ground 3

5. Mr Pipi relied on the fact that the appellant and his wife were asked 210 questions and he submitted that they answered most of them correctly. It was his view that the Judge erred as the respondent had erred in selecting the inconsistencies and saying nothing about the consistent evidence and what weight had been given to that evidence.
6. It was a matter for Judge Paul what weight he gave to each piece of evidence before him and it was also a matter for him whether he made specific findings on each issue; for example as indicated by Mr Duffy a large number of the questions at interview were in relation to whether or

not the couple lived together and the Judge had accepted, at [24], that 'they may be living together'. The Judge was also aware of how many questions were asked, setting this out at [4] and including a summary of the types of questions asked and where discrepancies lay and the Judge later, at [22] indicated that the refusal letter from which he had quoted highlighted 'some very significant differences between the appellant's accounts'. The Judge also set out at [7] to [15] the explanations of the appellant and his wife in relation to their answers at interview.

7. It was clear the Judge had in mind the consistencies in the account including in his finding that the couple may indeed be living together and, at [22] where he was of the view that 'it would be possible for people to rehearse their answers, and indeed if it was clearly too well rehearsed then there would be no discrepancies'. When viewed in its entirety the Judge's reasoning was adequate and he made a clear finding in conclusion (at [22]) that the 'basic details given in relation to the marriage and the circumstances before and after the marriage were, in my view, unsatisfactory'. The appellant's argument is no more than a disagreement with the Judge's findings.

Ground 4

8. Again the argument that the Judge was unreasonable in concluding at [23] in relation to the appellant's salary going into the sponsor's bank account that this was not proof of the relationship given that the appellant is unable to hold a bank account due to his own illegal status, was without foundation. The Judge gave clear reasons for this finding which was one that was open to him. Although Mr Pipi indicated that this was unreasonable as the sponsor's bank account would be the 'last place' the appellant would use if the marriage was not genuine, that is again nothing more than a disagreement with the Judge's findings. In finding, at [24], that it was perfectly possible that the appellant had staged photographs for the purposes of persuading the respondent that the marriage was genuine, the Judge was making a finding as to the lengths the appellant was prepared to go to in relation to try to show that a marriage was genuine. It was open to him, particularly in this context, to find that the appellant's salary being paid into the sponsor's bank account was no more than a convenience given the lack of his own account. There is no arguable error of law.

Ground 5

9. Mr Pipi argued that it was discriminatory of the Judge to take into account the age gap between the appellant and the sponsor. Mr Pipi did not however demonstrate, how noting as a matter of fact, in the Judge's findings in the round, that there was a 17 year age gap between the appellant and his wife, constituted discrimination. It was open to the Judge to take all the factors into consideration (including in the sponsor's favour that as a single woman she 'may have been more inclined to find a

partner') and then to reach the rational conclusion that the appellant had not demonstrated that the marriage was not a marriage of convenience.

Ground 6

10. Again this ground has no merit; the Judge did not misunderstand the burden or standard of proof and correctly directed himself at [18] that the burden initially rests with the respondent to show there are grounds for believing the marriage is one of convenience and then that burden shifts to the appellant (Papajorgji (EEA spouse marriage of convenience) [2012] UKUT 38 as approved by the Court of Appeal in Rosa v Secretary of State for the Home Department [2016] EWCA Civ 14 applied). His finding, at [24] that it was 'perfectly possible' that the wedding photographs were staged for the purposes of persuading the respondent that the marriage was genuine, does not disclose any misapplication of the balance of probabilities as the standard of proof.

Notice of Decision

11. The appeal is dismissed. The decision of the First-tier Tribunal did not any contain errors of law and shall stand.

Anonymity

No anonymity direction was sought or made.

Signed

Date: 8 February 2016

Deputy Judge of the Upper Tribunal Hutchinson