



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: EA/03779/2015

**THE IMMIGRATION ACTS**

Heard at Field House  
On 29<sup>th</sup> June 2018

Decision & Reasons Promulgated  
On 18<sup>th</sup> July 2018

Before

UPPER TRIBUNAL JUDGE FRANCES

Between

MIMI PESCARU  
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Mr F Junior, Lawland Solicitors

For the Respondent: Ms R Ahmad, Home Office Presenting Officer

**DECISION AND REASONS**

1. The Appellant is a citizen of Romania born on 7 February 1989. Her appeal against was dismissed by First-tier Tribunal Judge Nicholls on 6 December 2017.
2. Permission to appeal was granted by First-tier Tribunal Judge Alis for the following reasons:

“The grounds argue the judge did not consider the appellant’s personal circumstances or have any regard to the fact that at the date of hearing she was entitled to permanent residence. Looking at the decision as a whole I accept it is arguable that the judge did not consider the appellant’s personal circumstances as required both by the Citizens Directive and the respondent’s own guidance. All grounds are arguable.”

### **Submissions**

3. Mr Junior accepted that the Appellant was unable to show that she was entitled to permanent residence because the evidence of exercising Treaty rights did not cover a five year period. It would appear that the bundle of documents containing such evidence was not before the judge in any event. Mr Junior submitted that the judge had however made an error of law in his assessment of Regulation 19 of the Immigration (EEA) Regulations 2006.
4. The Appellant had been coerced into attempting to enter into a marriage of convenience. On the facts of the Appellant’s case this was not sufficient to engage Regulation 21B. The particular facts did not amount to behaviour covered by that Regulation. The judge failed to make any findings on whether he accepted the Appellant’s account and further failed to take into account the Appellant’s personal circumstances. It was clear from paragraph 3 of the Appellant’s witness statement that her child was living with her in the UK. The judge made a mistake at paragraph 6 in stating that in her statement the Appellant confirmed she was a national of Romania, that she was divorced and had one child of her marriage who lived with her mother in Romania. That was not the case. The Appellant’s daughter came to the UK in about October 2016 and was living with the Appellant at the time of the hearing. There were documents on the court file relating to the daughter’s admission to school, but these were received by the Tribunal in February 2018 and were not before the First-tier Tribunal.
5. Ms Ahmad submitted that any error in the judge’s failure to consider the Appellant’s personal circumstances was not material. The judge concluded at paragraph 14 that the Appellant had abused her EEA rights in the UK. The judge considered her account that she had been coerced and had not received any payment. There were no details in relation to the Appellant’s daughter before the judge other than she lived with the Appellant. There was little evidence of any family, private life or integration in the UK. On the evidence before the judge it was difficult to see how he could have come to a conclusion that she could not be removed.
6. It was unfortunate that the Appellant was not called to give evidence before the First-tier Tribunal. The judge cannot be criticised for failing to make findings when no evidence of the Appellant’s personal circumstances was put before him. The appeal could not have been allowed even if the judge had referred to the Appellant’s personal circumstances as there was nothing to show that the Appellant had strong ties to the

UK or that her daughter was integrated. Notwithstanding the error of fact that the child was living in the UK not in Romania, there was no reference to how long she had been in the UK, whether she was at school and the judge could not be blamed for not referring to matters which were not in evidence before him.

7. In relation to whether the Appellant's behaviour satisfied the EEA Regulations 2006, Ms Ahmad submitted that the judge appreciated, in paragraph 14, the Appellant's account that she had been coerced. He found that the Appellant went as far as claiming a relationship with someone who was a mere acquaintance and that was sufficient to satisfy the definition in Regulation 21B(1). Therefore, the Appellant's actions did amount to an abuse of rights within paragraph 21B(2). This finding was open to the judge on the evidence before him and he gave cogent adequate reasons for his conclusions.
8. Mr Junior submitted that the Appellant should not be criticised for her failure to give evidence. The Respondent conceded that he would have no questions for her had she given evidence. The fact that the Appellant had been coerced into agreeing to a marriage of convenience meant that she had not committed the offence because at the outset of her interview she volunteered information that the marriage was not a genuine one.
9. Mr Junior accepted that there was no other evidence to submit in relation to the Appellant's personal circumstances. Therefore, if I concluded that there was an error of law, I should decide the appeal on the evidence that was before me.

### **Discussion and Conclusions**

10. At paragraph 11 of her witness statement the Appellant stated:

"I therefore accept that I was going to enter into a marriage of convenience but I did not abuse my rights as a European national. I believe that I was abused in that I was made to enter into this sham simply because I was in love with Rami. I did not wish to gain any advantage or any financial reward for this. It was purely because I loved my ex-boyfriend."

11. The judge found at paragraph 14:

"It was argued on behalf of the Appellant that she had not actually abused her rights as an EEA national because she had volunteered to the Immigration Officers an admission that the circumstances were intended to support a marriage of convenience but no actual marriage took place. I do not accept that submission. The Appellant admits that she entered into the arrangement voluntarily although she argues that she was put under pressure by her then domestic partner. She voluntarily attended the marriage interview, something she need not have done, which would have led to the rejection of the application.

There is certainly no evidence to suggest that she received any payment and she insists that she always had reservations. Nevertheless, she went as far as claiming a relationship with a person with whom she did not have any relationship other than mere acquaintance in circumstances which might have led to the issuing of a residence card on a fraudulent basis. Bearing in mind the definition in Regulation 21B(1), I find the Appellant's actions did amount to an abuse of rights within the meaning of subparagraph (2) and that it was open to the Respondent to make a decision that the Appellant should be removed from the UK. Bearing in mind the substantial weight of the public interest in this issue and the absence of significant mitigation of the Appellant's actions, I find that the decision to remove her from the UK meets the requirements of proportionality as required by subparagraph (2)."

12. The definition contained in Regulation 21B(1) defines an abuse of the right to reside to include entering, attempting to enter or assisting another person to enter or attempt to enter a marriage or civil partnership of convenience. If those circumstances arise the Secretary of State may conclude that there are reasonable grounds to suspect an abuse of the right to reside and it may be proportionate for the individual to be removed from the UK.
13. I find that the judge took into account the Appellant's explanation at its highest, but concluded that, even if she had been pressured to enter into the relationship by her ex-boyfriend, she had nonetheless admitted that she was going to enter into a marriage of convenience. This finding was open to the judge on the evidence before him, particularly given what is stated at paragraph 11 of the Appellant's witness statement. The judge's finding that this behaviour satisfied the definition in Regulation 21B was open to the judge on the evidence.
14. It was then for the judge to consider the issue of proportionality. The judge made no reference to the Appellant's personal circumstances save to set out what is in the Appellant's witness statement at paragraph 6 of his decision. The judge made a factual error in paragraph 6. The Appellant's daughter lived in the UK at the date of hearing and not in Romania with the Appellant's mother.
15. However, this factual error was not material to the decision. The Appellant's daughter came to the UK in October 2016 to live with the Appellant. The daughter had not been residing in the UK for a significant length of time and, although she had started school, it could not be said that she had developed sufficient ties or was sufficiently integrated such that her presence in the UK would render the Appellant's removal disproportionate.
16. The evidence of the Appellant's personal circumstances was extremely limited and was taken into account by the judge at paragraphs 6 and 7. It was accepted by the Appellant's representative at the hearing before me that there were no other circumstances other than those to which I have just referred.

17. Accordingly, any failure to specifically mention the Appellant's circumstances in the decision and in assessing proportionality was not material because, even if the judge had taken into account the presence of the Appellant's daughter in the UK, he would not have come to a different conclusion. The daughter's residence in the UK of about a year at the time of the decision was not sufficient to outweigh the public interest in removing the Appellant for abusing her rights as an EEA national.
18. I find there was no material error of law in the judge's decision to dismiss the appeal dated 6 December 2017 and I dismiss the Appellant's appeal to the Upper Tribunal.

**Notice of decision**

**Appeal dismissed**

**No anonymity direction is made.**

*J Frances*

Signed

Date 16 July 2018

Upper Tribunal Judge Frances