



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: EA/13133/2016

THE IMMIGRATION ACTS

Heard at Field House
On 3 September 2018
(extempore judgement)

Decision & Reasons Promulgated
On 14 September 2018

Before

UPPER TRIBUNAL JUDGE PERKINS

Between

IBRAHIM KARAMOH KAMARA
(anonymity direction not made)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms S Akhtar, Counsel instructed by Visa and Migration Ltd,
solicitors
For the Respondent: Mr L Tarlow, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal by a citizen of Sierra Leone against a decision of First-tier Tribunal Judge Geraint Jones QC dismissing his appeal against a decision of the Secretary of State to refuse him a residence card on the basis of his marriage to an EEA national. The First-tier Tribunal Judge was satisfied that the appellant's marriage was a marriage of convenience. Given that

it is settled law that the burden of proving this rests on the Secretary of State, who did not trouble to attend before the First-tier Tribunal and did not produce the interview records that might have been thought to assist, it is possibly a little surprising that the judge found the case was proved but he did.

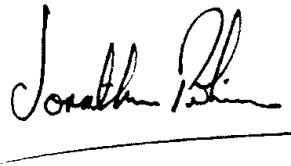
2. The appellant complains that the First-tier Tribunal Judge misdirected himself and applied the wrong test in assessing the meaning of marriage of convenience. That complaint, I am satisfied, is entirely justified. At paragraph 19 of his decision the First-tier Tribunal Judge notes correctly that the phrase “marriage of convenience” is not defined in the Regulations and the judge decided that “it is sufficient that the marriage was entered into with the motivation” of procuring status, and a little before in the same paragraph he said that the motive must have “played at least a significant (more than minimal part) in the decision to marry”.
3. If that was the correct test there might have been some justification in the First-tier Tribunal Judge’s decision because he rightly refers to the appellant’s less than satisfactory immigration history and what might be construed as determined efforts to contrive a reason to remain in the United Kingdom. But that is not the correct test. This was established clearly by the Supreme Court in the case of **Sadovska and Anor v Secretary of State for the Home Department** [2017] UKSC 54 where it was made clear, at paragraph 24, that the Commission had prepared a commentary on the Directive which said at Recital 28 that defined:

“marriages of convenience for the purposes of the Directive as marriages contracted for the sole purpose of enjoying the right of free movement and residence under the Directive that someone would not have otherwise”.
4. It is a very high standard that emphasises the sole purpose of a marriage although it does a permit degree of laxity to prevent presumably any slightly qualifying factor allowing a marriage that is predominantly a marriage of convenience to qualify for a residence card.
5. The judgment of the Supreme Court makes it plain that the mere fact that a person does obtain an advantage by reason of a marriage that might be wholly convenient to them and one they very much want to have is not determinative of the question of whether the marriage itself was a marriage of convenience. The Supreme Court approved the relevance of the guidance and before me Ms Akhtar has drawn attention to the characteristics given in the guidance of the sort of thing that would suggest a marriage of convenience. These include that a couple have never met, they have given different histories, they do not have a common language, that money has been used to encourage the marriage, that there is a history of abuse of the marriage system, that family life was only developed after expulsion was contemplated, and they have only lived together for a short time to acquire a right of residence. Most of these factors are absent and those that are present in this case are present only in a minimal or token form. This of course is not determinative but it does suggest the kind of features that would be expected in a marriage of convenience by those that drafted the Directive but do not occur here.
6. There is a very important factor in this case; it is that at the time of the First-tier Tribunal hearing the appellant’s wife was pregnant and I am happy to record, although I have seen no direct evidence of this, that she has now been safely delivered of a baby. The First-tier Tribunal Judge, apparently correctly given the definitions approved by the Supreme Court,

directed himself that he was not concerned with the state of the marriage now but the reasons for entering into it. It is implicit in the First-tier Tribunal Judge's decision that he did accept there was a subsisting marriage which is a very easy decision to reach when supported by evidence of a reason of a pregnancy in which both parents or prospective parents seem pleased. I am not at all satisfied that there is evidence here that persuades me that the sole, in the sense of main or underlying, purpose of the marriage here was a marriage of convenience. The evidence does suggest that the appellant is very pleased to be able to take advantage of his marriage to secure status in the United Kingdom, it is something he wants and has tried unsuccessfully to achieve by other means but that is not at all the same as saying that the underlying sole purpose of the marriage is one of convenience. This is on the face of it a genuine marriage and I am not prepared to say that it did not start off as a genuine marriage, I prefer the view that it was a marriage in which mutual support and companionship and founding a family was a major consideration and that should have been apparent in the First-tier Tribunal Judge.

7. I set aside his decision because he applied the wrong test and I substitute a decision allowing the appellant's appeal against the decision of the Secretary of State.

Signed
Jonathan Perkins
Judge of the Upper Tribunal

A handwritten signature in black ink, appearing to read 'Jonathan Perkins', written over a horizontal line.

Dated 12 September 2018