



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

Appeal Number: IA/25249/2015

THE IMMIGRATION ACTS

**Heard at Field House
On 21 November 2017**

**Decision and
Promulgated
On 08 January 2018**

Reasons

Before

UPPER TRIBUNAL JUDGE CONWAY

Between

**MRS FATEMA NASREEN
(NO ANONYMITY ORDER MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Kannangara

For the Respondent: Ms Aboni

DETERMINATION AND REASONS

1. The appellant is a citizen of Bangladesh born in 1983. She appeals against a decision made on 27 June 2015 to refuse her application for a residence card as a confirmation of a right to reside in the UK. She had applied as the non-EEA national family member spouse of Pietro Russo, an Italian national exercising treaty rights in the UK.

2. The application was refused because it was considered that the couple did not seem comfortable with each other in their wedding photographs. These did not illustrate a couple in a genuine relationship. Also there appeared to be a cultural difference between herself and her EEA sponsor. Further she held no valid leave to remain and other than a tenancy agreement there was little evidence to suggest that they knew each other prior to the wedding. It was considered that the tenancy agreement, a typed up document, could have been easily fabricated.
3. In addition it was noted that in the application form she and her sponsor were residing at an address in Village Road, Enfield, London. However, an immigration visit to that address on 25 October 2014 suggested that they were not living there. A letter was received by the Home Office on 30 October 2014 stating that they had changed address to Hamilton Crescent, Palmers Green, London. An immigration visit in April 2015 to that address indicated they were not known there.
4. The respondent concluded that the marriage was one of convenience.
5. She appealed.

First tier hearing

6. Following a hearing at Hatton Cross on 20 October 2016 Judge of the First-tier Tribunal dismissed the appeal. Her findings are at paragraph [6] to [17]. She noted the various addresses: Village Road on the marriage certificate with the sponsor's address given as Croyland Road, Edmonton, London; then Hamilton Crescent; finally by December 2014 River Bank, Winchmore Hill, London where they remained. She found that they were both indeed living there but the issue was whether the marriage is genuine and subsisting.
7. In that regard noting the respondent's concern that there was no evidence that the appellant and sponsor had known one another prior to the wedding, the judge did not believe the sponsor's answer in evidence that he had been living at that time with his mother in Croyland Road. She found that he was living at Hamilton Crescent. She concluded that they had had no form of courtship prior to the wedding [11].
8. The judge accepted that the changes of address had been intimated to the respondent every time she moved but found it significant that on the visit to Village Road in October 2014 "*no one at the property was aware of someone Italian living there*" [12].
9. Having noted that the sponsor's mother did not appear in the wedding photographs nor had she supplied any evidence in support of the appeal, the judge found (at [13]) that following the wedding ceremony "*the parties went their separate ways*" until the appellant became aware that the immigration authorities were checking on the genuineness of the marriage

whereupon they have “*genuinely moved in together at the current address*”. However, she did not accept that they are in a genuine and subsisting marriage [13]. She added (at [14]) that the sponsor is a vulnerable man who suffers from epilepsy and has had surgery on his foot. He also earns a low income and is in debt.

10. The appellant sought leave to appeal which was granted on 6 June 2017.

Error of law hearing

11. At the error of law hearing before me on 25 July 2017 it was agreed by both parties that the decision showed material error of law. It suffices to note two matters. First, despite having been referred to ***Papajorgji (EEA spouse - marriage of convenience) Greece [2012] UKUT 00038*** and that the burden of proof for proving whether a marriage is a sham for immigration purposes rests with the Home Office, the judge made no mention of ***Papajorgji*** which was confirmed in ***Rosa [2016] EWCA Civ 14***, and appeared to consider that the burden rests with the appellant. Second, the judge’s findings were inadequately reasoned. For example, no reason was given at [11] for the finding that when they first met the sponsor was not living with his mother at Croyland Road which was his address given in the marriage application, but at Hamilton Crescent. Further, no basis was given for the finding (at [13]) that the parties went their separate ways following the marriage ceremony.
12. I set aside the decision for the case to be reheard before myself. It was indicated that oral evidence would be led. It was not possible to hear that on the day. Thus the matter came before me at the resumed hearing on 21 November 2017.

Resumed hearing

13. I heard evidence in English from the appellant and Mr Russo. In summary, the appellant adopted her original and supplementary statements.
14. In cross-examination she said they had first met in 2013 and first discussed marriage after two or three months. They moved in together to Village Road on 30 June 2014 the day of the marriage. Prior to that she had lived at another address in Enfield. Her husband had lived with his mother at Croyland Road. In October 2014 they moved together to Hamilton Crescent, then in December 2014 to River Bank. Since moving in to Village Road they had always lived together.
15. Asked why having moved to Hamilton Crescent in October 2014 there was no knowledge of them when the authorities called in April 2015, she said they had not had a good relationship with the landlady. That was also the reason why although documents showed her at the address her husband held back from transferring his details to that address. She accepted that even after they moved to River Bank in December 2014 her husband’s

payslips were still stating his address as Croyland Road. She said it had not been thought important to change the payslip details. It had been that address for his work purposes for a long time and it is his mother's permanent address.

16. Asked who had attended the wedding she said her family had but his family had not because his mother was unwell. Friends from both sides had gone. Asked why such friends had not attended the current hearing she said they are working. They had attended the hearing at Hatton Cross and provided letters of support. Asked if her parents were here she said they had gone back home.
17. Mr Russo also adopted his statements. He said they first met in 2013, first discussed marriage four or five months later and had started to live together after their marriage at Village Road. Prior to that he had been living with his mother and his wife had been living at Village Road. They had then moved together to Hamilton Crescent followed in December 2014 to their present address. Since marriage they have always lived together. He also said that he had not thought of changing the address of his payslips from his mother's address.
18. Asked why there had apparently been no knowledge of them when the authorities made the immigration visit to Hamilton Crescent he said they had not got on with the landlady.
19. In brief submissions Ms Aboni submitted that concerns remained about the genuineness of the marriage, in particular, that no satisfactory response had been given about why they had not been known of when the authorities called. Also, it was unclear whether they had moved to Village Road together or whether the appellant had been there first. Further, while there was documentation showing the appellant at the various addresses such was limited in respect of the sponsor, much of the items for him at Hamilton Crescent being marketing materials. It was, in addition, curious that his payslips were still showing his mother's address two years after he left there. There was no obvious reason why he would not have told his employer that he had moved on. Whilst it was evident that there is some link at the present address, Ms Aboni questioned whether he is living with his wife.
20. Finally, Ms Aboni said it was significant that none of the family or friends who had attended their wedding had given oral evidence at Hatton Cross or had attended the resumed hearing.
21. In reply, Mr Kannangara submitted that the appellant and her husband had given consistent evidence. It was hardly surprising that the authorities got little information when they visited the two addresses. The couple had moved out. The Home Office had been informed. It was noteworthy that they had never been interviewed, nor had they been visited at River Bank. As for any lack of documents they had only been briefly and unhappily at

Hamilton Crescent. There were plenty of documents linking them both to Village Road and to River Bank. There was no reason to doubt his explanation that he had simply not got around to changing the address for his payslips. His mother's address was permanent. It was significant that it was he who had produced the payslips for the First-Tier hearing. Such indicated they have nothing to hide. It was clear from the recent bank statements that his salary is ongoing.

22. As for the lack of evidence from witnesses it was clear his mother had ill health, indeed the marriage date had been delayed because of that. There is clear evidence of support from friends and indeed from their current landlord.

Consideration

23. In considering this matter as the Supreme Court stated in ***Sadovska and Another v SSHD (Scotland) [2017] UKSC 54*** the burden of proof for establishing that the marriage is one of convenience falls on the Secretary of State (see [28]).
24. In my judgement in this case she fails to do so. The appellant and sponsor attended on each occasion before me as they had before the First tier. Both speak good English. On the issue of having no leave, the appellant claims she had valid leave until February 2015 and the application was made in August 2014. Ms Aboni did not address me on the matter and I was referred to nothing in the papers to support the claim that leave was curtailed in June 2014. On the information before me I prefer the evidence of the appellant. In any event, I found them in their evidence before me to be credible and largely consistent in their detailed accounts. Indeed, they came across as patently truthful leading me to the conclusion that this is from its inception a genuine and lasting relationship. I see no reason to doubt that their relationship developed when he worked at a take-away restaurant and she was a customer and that despite their different backgrounds they found they had a lot in common and as a result the relationship developed. I do not find persuasive the respondent's claim against them that they looked uncomfortable in the wedding photos. I believed the explanation that out of respect to her strict religious background and to her parents a measure of formality was appropriate.
25. There was uncertainty as to whether the appellant started living at the address in Village Road before the wedding in 2014 as the sponsor said, or as she said, immediately after when the sponsor started living there. Noting documents lodged by the appellant which indicate that she was at that address prior to the wedding rather than at a different address in Enfield, I conclude that the sponsor was correct. However, I do not find it to be significant. It is understandable that for events more than three years ago recollection may be confused.

26. I find no significance in the fact that two visits by the immigration authorities in October 2014 to Village Road and in April 2015 to Hamilton Crescent did not find them. They had moved on and on each occasion had intimated such to the respondent. I did not find significant the claimed lack of knowledge of the sponsor and his wife on the visit in April 2015. It had been months since they had intimated their move from there. I find no reason to doubt their evidence that their relationship with the landlady at Hamilton Crescent had been poor. It is clear that they remained there only briefly, some two months. I find it credible that those spoken to were not able to, or did not wish to, remember them.
27. As for documentation there is ample placing the appellant at Village Road, Hamilton Crescent and latterly at River Bank. These include bank statements, utility bills, HMRC letters. There is also documentary evidence placing the sponsor at Village Road and River Bank. These include bank statements and letters. I do not find significant a lack of items from the sponsor in respect of Hamilton Crescent. I again find credible his evidence that it was such an unhappy and brief stay there that he did not find it necessary to intimate change of address.
28. As for his payslips still showing the Croyland Road address, this is his mother's address where he had lived before marriage and where she continues to live. I find plausible his claim that he never found the need to update that matter. I note that it was he who lodged the payslips which supports his claim that he has nothing to hide. It is clear from bank statements that he continues in that employment. The fact that there is relevant joint documentation with the River Bank address, including an account with the Halifax in joint names gives support to their claim as to the genuineness of the relationship.
29. Nor do I find merit in the claim that there is an absence of evidence in support from friends and family. I accept his evidence that his mother was unable to attend the wedding because she was ill. Medical evidence was lodged in support of the claim that she suffers long term medical issues. There were letters of support from friends before the First-tier tribunal. It was not challenged that they had attended that hearing. I accept that work commitments made this difficult for them at the resumed hearing.
30. In summary for the reasons stated in light of the totality of the information before me I am not satisfied that it is more probable than not this was a marriage of convenience.
31. The appeal succeeds.

Notice of Decision

The decision of the First-Tier Tribunal showed the making of an error of law. It is set aside and remade as follows:-

The appeal is allowed.

No anonymity order made.

Signed

Date 04 January 2018

Upper Tribunal Judge Conway