



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

Appeal Number: EA/07120/2021
[UI-2021-001337]

THE IMMIGRATION ACTS

Heard at Field House

**Decision & Reasons
Promulgated**

On: 22 March 2022

On: 10 May 2022

Before

**UPPER TRIBUNAL JUDGE KAMARA
DEPUTY UPPER TRIBUNAL JUDGE THOMAS QC**

Between

ELGERT GJYMENGA
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: The Appellant did not appear and was not represented.
For the Respondent: Ms J Isherwood, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. This is an appeal against the decision of First-tier Tribunal Judge Moon, promulgated on 9th November 2021. Permission to appeal was granted by First-tier Tribunal Judge Roots on 5th January 2022

Anonymity

2. No anonymity direction was made by the First-tier Tribunal. Considering the facts of this case and the circumstances of the appellant and his spouse, we could see no reason for making a direction.

Representation

3. The appellant was represented by solicitors and counsel before the First-tier Tribunal (our papers contained a skeleton argument for those proceedings dated 20th October 2021). Counsel settled Grounds of Appeal dated 23rd November 2021. Yesterday, a very short written application was made to adjourn the hearing on the basis the sponsor was not in the UK (a fact of some note given the particular facts of this case, though immaterial to our error of law decision) and that counsel hitherto instructed in the appeal was not available. There was further communication between the Tribunal and solicitors instructed on behalf of the appellant in which it was explained the attendance of the sponsor was not required given this was an error of law hearing, and information was provided that counsel had indicated his unavailability in the week prior to the hearing but that the appellant was refusing to attend the hearing unless he was represented by counsel of his choice (and not a replacement). As anticipated, given what was indicated by his solicitors, the appellant did not attend and he was not represented.
4. We concluded that the appellant was deliberately absent. In the appellant's absence, we had to resolve the application on the limited information available to us. The Respondent objected to the adjournment, submitting this was a relatively straightforward case that could have been returned to other counsel, and that the appellant's deliberate absence meant that we had no further information other than he had chosen not to attend and chosen not to have his case returned to other counsel. We agreed with those submission and we concluded it was in the interests of justice not to allow the adjournment and we proceeded to hear the appeal. We had read in advance the written material submitted on the appellant's behalf. In the hearing, we sought to press Ms Isherwood on the matters raised in the Grounds of Appeal and in the appellant's skeleton argument before the First-tier Tribunal.

Background

5. The appellant, a national of Albania, applied for an EU Settlement Scheme (EUSS) Family Permit under Appendix EU (Family Permit) to the Immigration Rules on the basis that he is a family member of a EEA citizen, namely Chrysoula Margaritogolou, a Greek citizen.

6. The application was refused on 19th April 2021 on the basis the marriage between the appellant and Ms Margaritogolou was a marriage of convenience. The appellant appealed against that ruling pursuant to Regulation 3(c) of the Immigration (Citizens' Rights Appeals) (EU Exit) Regulations 2020, on the grounds that the Respondent had failed to demonstrate, on the balance of probabilities, that it was a marriage of convenience.
7. In very brief summary, the chronology relied upon by the Appellant and Ms Margaritogolou ('CM' for these purposes) is as follows:

July 2018:	The Appellant entered the UK on a lorry from France.
5 th March 2020:	CM enters the UK.
March 2020:	CM meets the Appellant.
12 th April 2020:	CM and the Appellant commence a relationship.
20 th April 2020:	CM and the Appellant begin cohabitating.
6 th October 2020:	CM and the Appellant get married.
9 th October 2020:	The Appellant submits a leave to remain application.
December 2020:	CM leaves the UK and returns to Greece.
3 rd April 2021:	CM returns to the UK.
12 th April 2021:	CM and Appellant attend 'marriage interview'.
17 th April 2021:	CM leaves the UK and returns to Greece.
17 th September 201:	CM returns to the UK. Signs witness statement (21.9.21)

8. Ms Margaritogolou was in the UK for the hearing before the First-tier Tribunal on 4th November 2021. She is currently out of the UK.

The decision of the First-tier Tribunal

9. The First-tier Tribunal heard oral evidence from the appellant and Ms Margaritogolou, as well as evidence of more limited relevance from the appellant's uncle and cousin. The First-tier Tribunal considered the consistencies and inconsistencies in their evidence and the extent to which difficulties with the translation in the marriage interview could have accounted for some inconsistencies. Balanced findings were made about the effect of the appellant attempting to communicate with Ms Margaritogolou during her evidence. Some findings were made in favour of the appellant and other findings made adverse to the appellant. In particular, the First-tier Tribunal found that discrepancies in their evidence about when Ms Margaritogolou had travelled to Greece were significant (*"If the appellant and sponsor were in a genuine marriage I find that their evidence would have been consistent in relation to whether they had been in different countries and for how long"*) as were discrepancies about his recent work; he found the appellant *"deliberately evasive"*).

10. The First-tier Tribunal considered the evidence as a whole and found that the Respondent had shown there were reasonable grounds for suspecting a marriage of convenience and concluded that it was more likely than not the marriage is one of convenience. The appeal was dismissed.

The grounds of appeal to the Upper Tribunal

11. In the grounds of appeal, it was argued that the First-tier Tribunal failed to consider all the material evidence in the round, overlooking the evidence that was consistent between the appellant and Ms Margaritogolou (Ground 1) and further or alternatively failed to give adequate reasons (Ground 2).
12. Permission to appeal was granted on both grounds.
13. The respondent's Rule 24 response, dated 23rd February 2022, asserted that the First-tier Tribunal (i) plainly had considered all the evidence in the round, as he explained at paragraph 21 and 52; (ii) had reached balanced findings, for example, finding their evidence was consistent in relation to how the spent the day before the marriage (at paragraph 24) (iii) engaged with potential difficulties arising from the interpreter in the marriage interview (iv) and gave adequate reasons.

The hearing

14. We heard submissions from Ms Isherwood in which she adopted the Respondent's position in the Rule 24 Response and took us through the Decision and Reasons, highlighting firstly, where the First-tier Tribunal had considered both consistencies and inconsistencies, secondly, examples that demonstrated a balanced approach, and thirdly, where the First-tier Tribunal had directed itself to consider all the evidence. She submitted there was no error of law.
15. We asked Ms Isherwood about the Respondent's position on whether the First-tier Tribunal had taken into account the consistencies highlighted at paragraph 11 of the Appellant's skeleton argument before the First-tier Tribunal (and repeated at paragraph 8 of the Grounds). Ms Isherwood submitted that some of them were the subject of close analysis by the judge (e.g. (b), Ms Margaritogolou's travel to Greece and (n) Ms Margaritogolou's musical abilities) and that in relation to some others the judge did make a finding in their favour (e.g. (m) the wedding day). The judge did balance the consistencies and inconsistencies, but where the burden was on the Respondent to prove the case was a marriage of convenience it is perhaps not surprising that the more in-depth reasoning was reserved for those areas that persuaded the judge that burden had been met.

Decision on Error of Law

16. Grounds 1 and 2 can be taken together. The First-tier Tribunal plainly directed itself correctly on the need to consider all the evidence in the round before arriving at a decision. This can be seen at paragraphs 21 and 52 of the decision.
17. Equally plainly, a fair approach was adopted to the evidence, with the First-tier Tribunal arriving at findings that some of the evidence was consistent and reliable, for example evidence relating to marriage and finances (paragraph 48) and how the appellant and Ms Margaritogolou had spent the day before the hearing (paragraph 24). There was a similarly balanced approach to the appellant's apparent attempts to communicate with Ms Margaritogolou whilst she was giving her evidence (paragraph 17).
18. The First-tier Tribunal gave reasons why it was reaching conclusions adverse to the appellant (e.g. at paragraph 42) and, in arriving at its conclusions, directed itself correctly as to the burden and standard of proof.
19. It was not incumbent on the First-tier Tribunal to address in turn each and every one those aspects of the evidence that were said in the Appellant's skeleton argument to demonstrate where the evidence of the Appellant and Ms Margaritogolou had been consistent. It is clear from the decision and reasons that the judge considered all the evidence - including consistencies and inconsistencies - and that the judge directed himself correctly, provided reasons for his analysis, and was entitled to arrive at his conclusions. There was no error of law.

Decision

The making of the decision of the First-tier Tribunal did not involve the making of an error of law. The appeal is dismissed.

No anonymity direction is made.

**Signed: Richard Thomas
2022**

Date: 31 March

Deputy Upper Tribunal Judge Thomas QC