



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-003852
First-tier Tribunal No:
EA/08835/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 04 December 2023

Before

DEPUTY UPPER TRIBUNAL JUDGE SKINNER

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MR GAZMIR DEDOLLI
(ANONYMITY ORDER NOT MADE)

Respondent

Representation:

For the Appellant: Mr S. Walker, Senior Home Office Presenting Officer
For the Respondent: Mr A. Yusuf, of Kingswood Solicitors

Heard at Field House on 23 November 2023

DECISION AND REASONS

Introduction

1. Mr Dedolli is a citizen of Albania. He is married to a Romanian national, Mrs Florea. Mrs Florea has settled status in the UK. In 2020, Mr Dedolli was refused a residence card as the spouse of an EEA national on the basis that his marriage to Mrs Florea was a marriage of convenience. That decision was upheld by the First-tier Tribunal ("FTT") on appeal.
2. On 28 April 2021, Mr Dedolli applied under the EU Settlement Scheme for pre-settled status on the basis of his marriage to Mrs Florea and the Secretary of State refused that application in reliance on the earlier FTT finding that this was a marriage of convenience. Mr Dedolli appealed again to the FTT, but in a decision promulgated on 25 April 2023 ("the FTT Decision") FTT Judge Joshi ("the Judge") allowed his appeal, concluding that, notwithstanding the earlier FTT decision, he was satisfied that Mr Dedolli and Mrs Florea's marriage was not one of convenience. The Secretary of State now appeals with permission against that decision.

3. The hearing before me took place remotely. I was satisfied that there were no technological (or other) impediments to a fair hearing as a result. All parties and the Tribunal were able to communicate with one another with ease.
4. I was not asked to make an anonymity order in this case and in light of the importance of open justice, there does not appear to be any reason why I should do so of my own volition.
5. At the hearing, I heard from Mr Walker on behalf of the Secretary of State. I indicated that I did not need to hear from Mr Yusuf on Mr Dedolli's behalf, because I was satisfied that the appeal should be dismissed. I gave a short oral summary of my reasons and informed the parties that I would set out them out more fully in writing in due course, which I now do.

The FTT Decision

6. In the FTT Decision, after having summarised the background, the decision appealed against, the appeal, the documentary and oral evidence adduced and the parties' respective submissions, at para. 30 the Judge turned to what he described as his findings, but which in fact start with a summary of relevant legal principles.
7. In particular, at paras. 31-32, the Judge directed himself on the question of whether a marriage is a marriage of convenience by reference to Papajorgji (EEA spouse – marriage of convenience) Greece [2012] UKUT 38 (IAC) and Sadovska v Secretary of State for the Home Department [2017] UKSC 54. There is no dispute that those are the authorities which set out the appropriate legal test to be applied.
8. At para. 33, the Judge directed himself in accordance with Devaseelan [2002] UKIAT 000702 and BK (Afghanistan) v Secretary of State for the Home Department [2019] EWCA Civ 1358 in relation to the approach to be taken to earlier FTT decisions. There is no dispute that those are the authorities which set out the proper approach in that regard.
9. At paras. 34-35, the Judge considered the earlier FTT decision. He noted that the issue was the same – whether Mr Dedolli's marriage was one of convenience – and recorded that the previous FTT Judge had found that it was such a marriage. He highlighted the following parts of the earlier judge's reasoning in the previous decision that, presumably, the Judge considered of particular note, as follows:

“Whilst recognising in paragraph 7 that the Appellant and the Sponsor provided oral evidence with “a high degree of consistency between the replies given by them in circumstances where they could not have had warning of what they would be questioned about in evidence” the appeal was dismissed because of the Appellant's immigration history which included three unlawful entries and two removals, and the discrepancies that were raised in the marriage interview by the Respondent. Less weight was attached to the Social Worker's Report because it could only provide a very brief snapshot of what the social worker saw and made of it.”
10. At paras. 36-48, the Judge explained why he considered that the evidence did entitle him to depart from the previous finding and why he did not consider Mr Dedolli's marriage to be one of convenience. In particular:

- a. At para. 37, the Judge noted that two years having passed since the previous FTT decision, Mr Dedolli and Mrs Florea were still living together;
- b. At paras. 38-39, he recorded that there was documentary evidence spanning a three year period. The Judge found these to be important documents. Of particular note was a letter from the council in relation to council tax that pre-dated their wedding by four months.
- c. At para. 40, the Judge considered the report from the independent social worker, and considered that he could attach weight to it. It provided a further snapshot of Mr Dedolli's family life and was consistent with other evidence.
- d. At para. 41, the Judge attached weight to photographs adduced showing Mr Dedolli with Mrs Florea and her daughter, and noted that these would not have been available at the previous hearing, because Mrs Florea's daughter was not living with them until later.
- e. At para. 42, the Judge attached weight to the fact that Mrs Florea's daughter was registered for school in the UK and both she and Mr Dedolli had been issued with a 'parent card' by the school. Again, this was evidence not available at the time of the previous Tribunal decision.
- f. At para. 43, the Judge considered a number of WhatsApp messages between Mr Dedolli and Mrs Florea and found them supportive of his case.
- g. At para. 44, the Judge considered the oral and documentary evidence of Mr Ahmed, a support worker for Mrs Florea at Highfield Support Services. He was considered to be a credible witness, attending in a professional capacity. His evidence was that he had observed Mr Dedolli attending with Mrs Florea for her appointments on several occasions and noticed Mr Dedolli comforting the Sponsor. In their written records it was recorded that Mr Dedolli was her husband.
- h. At para. 45, the Judge noted the evidence provided by one of Mr Dedolli's and one of Mrs Florea's respective cousins. As their evidence could have been given at the previous FTT appeal, he attached little weight to it.
- i. At para. 46, he noted the evidence of a Mr Lisle, who recalled having seen them out in a restaurant he regularly attends. He was considered to be a credible witness.
- j. At para. 47, the Judge considered the discrepancies between the answers given by Mr Dedolli and Mrs Florea in their marriage interview. He noted that of the 112 questions asked, there were only 5 that were said to give rise to inconsistencies. Four were minor in context. The only significant discrepancy was that Mrs Florea did not refer to her daughter, but Mr Dedolli did. The Judge noted that if anything this supported the strength of Mr Dedolli's knowledge of Mrs Florea, because he was aware of her daughter and able to provide details. The Judge accepted Mrs Florea's explanation for not having mentioned her daughter - difficulty in getting custody and having only limited access at that time, which has impacted her mental health. This was not, the Judge considered, a case of Mrs

Florea keeping the details of her daughter from Mr Dedolli. The other oral evidence, the Judge considered, was largely consistent.

11. At para. 48, the Judge therefore concluded that, “[t]aking all those matters into account, I am satisfied on a balance of probabilities that the Appellant is married to the Sponsor as claimed and that it is not a marriage of convenience. I find that he is a family member of a relevant EEA citizen for the purposes of Appendix EU to the Immigration Rules.”

Appeal to the Upper Tribunal

12. By a notice of appeal dated 3 May 2023, the Secretary of State seeks to appeal against the FTT Decision. The Grounds are not particularly clear, but the essence of the grounds is that the Judge has conflated consideration of whether the marriage is one of convenience, to be assessed when the marriage is entered into, with whether it was now subsisting. It is suggested that continued cohabitation does not overcome a finding that it was entered into for the principal purpose of gaining an immigration advantage and the fact that a relationship has continued up to the date of a subsequent appeal hearing is an irrelevant consideration.
13. Permission was granted by First-tier Tribunal Judge Hamilton on 2 September 2023. He was “just about persuaded” that it was arguable that the Judge erred by failing to consider whether the relationship had evolved into a genuine relationship following a marriage of convenience or whether the marriage was one of convenience even though they were in a relationship at the time. The assertion that any genuine relationship that post-dated their wedding was irrelevant did not appear to Judge Hamilton be a strong ground of appeal. Nonetheless permission was given on all grounds.
14. There was no rule 24 response filed on behalf of Mr Dedolli.

Discussion

15. I deal first with the submission that evidence of the genuineness of a relationship after the date on which a marriage is contracted is not relevant to an assessment of whether that marriage is one of convenience. That submission seems to me to be misconceived and contrary to authority. There is no dispute that in determining whether a marriage is one of convenience, the Tribunal is required to consider the position as at the date the marriage was entered into. It is not the same question as whether the parties are in a genuine relationship (or, indeed, a genuine marriage). Self-evidently, if they are not in a genuine relationship, the obvious inference will be in many cases that the reason for entering into the marriage was to gain an immigration advantage, and that, as such, it is a marriage of convenience. While it is possible for individuals in a genuine relationship to have as their principal purpose of marrying the obtaining of an immigration advantage, the genuineness of their relationship is not irrelevant to that question. As Richard LJ (with whom Floyd and Moore-Bick LJ agreed) held *Rosa v Secretary of State for the Home Department* [2016] EWCA Civ 14, while “[i]t may be useful to contrast a marriage of convenience with a ‘genuine’ marriage... [t]he tribunal was correct to look at the evidence concerning the relationship between the appellant and her husband after the marriage itself (both before, during and after the husband’s period of imprisonment), since that was capable of casting light on the intention of the parties at the time of the marriage.”

16. Turning then to the question of whether the Judge conflated the question of the genuineness of the marriage and/or relationship with the question of whether the marriage was one of convenience, it is important to recall that the FTT is a specialist expert tribunal and that, as an appellate tribunal, I must assume, unless I detect an express misdirection, or unless I am confident, from the express reasoning, that it must be based on an implicit misdirection, that the FTT knew, and has applied, the relevant law: see ASO (Iraq) v Secretary of State for the Home Department [2023] EWCA Civ 1282 at [41] (Elisabeth Laing LJ, with whom Baker and Simler LJ agreed).
17. While I consider that the Judge could have expressed his reasoning more tightly, and in particular it would have been helpful had he set out expressly that he was considering matters as at the date on which Mr Dedolli and Mrs Florea entered into their marriage, I cannot detect from his reasoning any implicit misdirection and it is not suggested that there is any express misdirection. While the focus of his analysis was on the evidence that post-dates the earlier FTT decision (which is appropriate in light of the approach required by Devaseelan), the Judge was clearly alive to the fact that the question was whether Mr Dedolli and Mrs Florea's marriage was one of convenience at the date they entered into their marriage. This is made most obvious by the emphasis placed on the letter from the council, which the Judge specifically highlighted pre-dated their marriage. Had he been looking at whether they were now in a genuine relationship or their marriage had become genuine having not initially been such, this observation would have been unnecessary and irrelevant. It strongly indicates in my view that the Judge had well in mind and applied the correct question.
18. In those circumstances, this appeal must be dismissed.
19. By way of post-script, I observe that the Secretary of State's refusal was based solely on the fact that the marriage was one of convenience and it is for that reason that the appeals to the FTT and this Tribunal have also focused only on that issue. It may be (and I am not expressing a view either way) that the Secretary of State only raised that issue because he considered that all of the other conditions for pre-settled status were met, or it may be that he considered that, as it was dispositive, it was not necessary to consider the other issues. I flag this, because the Appellant should be aware, that success on this appeal does not necessarily mean success in his underlying application. Particularly in light of what is said about his unlawful entries and previous removals, it may be that the Secretary of State will wish now to consider whether he meets the suitability requirements of the EU Settlement Scheme.

Notice of Decision

The decision of the First-tier Tribunal did not involve the making of an error of law and shall stand.

Paul Skinner

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

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24 November 2023