



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM
CHAMBER

Case No: UI-2024-000911

First-tier Tribunal No:
EA/50230/2023

THE IMMIGRATION ACTS

**Decision & Reasons Issued:
On the 19 November 2024**

Before

UPPER TRIBUNAL JUDGE MANDALIA

Between

**EDUART AHMETAJ
(NO ANONYMITY DIRECTION MADE)**

Appellant

and

Secretary of State for the Home Department

Respondent

REPRESENTATION

For the Appellant: No appearance by or on behalf of the appellant
For the Respondent: Mr P Lawson, Senior Home Office Presenting Officer

Heard at Birmingham Civil Justice Centre on 25 June 2024

DECISION AND REASONS

INTRODUCTION

1. There was no appearance before me by or on behalf the appellant and neither is there any explanation for his absence. I note that in the Form IAFT-4, Application for Permission to Appeal to the Upper Tribunal, the appellant provides an address in Slough. The Upper Tribunal has been in communication with the appellant by email. On 22 March 2024, the appellant confirmed to the Tribunal that he is not legally represented and

does not require an interpreter. On 3 May 2024 the appellant was provided with a Notice of Hearing by email confirming this appeal will be heard on 25 June 2024. A copy was also sent to the appellant by post. As the appellant is unrepresented, on 12 June 2024 the appellant was provided, by email, with a copy of a bundle of documents prepared by the Upper Tribunal "in readiness for the hearing on 25 June 2024". There has been no response from the appellant. There is no application for an adjournment and no explanation for the appellant's absence.

2. Neither the emails nor the Notice of Hearing sent to the appellant by post have been returned to the Tribunal undelivered, and I am satisfied the appellant has had Notice of the Hearing in accordance with Rule 36 of The Tribunal Procedure (Upper Tribunal) Rules 2008. In the absence of any further communication from the appellant, an application for an adjournment or reasons to explain the appellant's absence, I am satisfied that it is in accordance with the over-riding objective and the interests of justice for me to determine the appeal in the absence of the appellant.
3. The appellant is a national of Albania. On 10 March 2023 the respondent refused the application made by the appellant under the EU Settlement Scheme for settled status or pre-settled status. The respondent concluded the appellant does not meet the eligibility requirements for settled status set out in rule EU11 and EU11A of Appendix EU to the Immigration Rules. The respondent noted the appellant claims to be the spouse of a relevant sponsor but had not provided sufficient evidence to support his claim. The respondent noted the appellant had provided a marriage certificate dated 20 August 2020 as evidence that he is the spouse of a relevant sponsor but noted that the appellant and sponsor were invited to attend an interview on two occasions. The respondent said the appellant had failed on two occasions to confirm he and his partner would attend the interview and the respondent concluded there is therefore insufficient evidence of a genuine relationship between the appellant and sponsor. The respondent concluded that there are reasonable grounds to suspect the appellant's marriage to the sponsor is one of convenience entered into as a means to circumvent the requirements for lawful entry to or stay in the UK or Islands.

THE APPEAL TO THE FTT

4. The appellant's appeal against that decision was listed for hearing on 29 November 2023 and dismissed by First-tier Tribunal Judge Robertson ("the judge") for reasons set out in a decision dated 14 December 2023. The judge recorded at paragraph [5] of the decision:

"The Appellant initially elected to have his appeal decided on the documentary evidence without a hearing but it was subsequently directed to be a face-to-face hearing. On the day before the hearing the Appellant notified that he would be unable to attend due to the death of his child but requested that the matter proceed in his absence."
5. There is a death certificate to confirm the death of the appellant's son on 26 November 2023. The appellant's absence was plainly understandable.

As invited to do so, the judge considered the appeal in the appellant's absence. At paragraph [8] the judge said:

"8. It is not disputed that he and the sponsor were invited to a marriage interview to be held on 21st March 2023. The Appellant submits that they confirmed by e mail on 6th March 2023 that they would attend and a screenshot of the email was submitted. But the interview was cancelled and his application refused on 10th March 2023. He claims that no further invitations were received. He has submitted a copy of their marriage certificate, their child's birth and death certificates and correspondence which he submits is evidence of their living together."

6. The judge's reasons for dismissing the appeal are set out in paragraphs [9] to [18] of the decision. The judge noted, at [9], that it is not disputed that the appellant and sponsor have had a child together and that the validity of the marriage certificate relied upon by the appellant has not been questioned by the respondent. The judge recorded that the issue at the heart of the appeal is the credibility of the appellant and whether the marriage is one of convenience.

7. The judge recorded at paragraph [10] of her decision that by the time of the hearing the appellant and his partner had in fact been invited for interview by the respondent on four separate occasions. The appellant and his partner were invited to attend interviews on 13th June 2023, 21st March 2023, 21st September 2023 and 27th September 2023 but they had failed to confirm they would attend on three occasions as required. I pause to note that the email address for the appellant used by the respondent is the same email address that has been used by the Upper Tribunal to communicate with the appellant. On the one occasion that the appellant had claimed he had informed the respondent they would attend, there was an anomaly in the evidence relied upon by the appellant. The judge recorded, at [11]:

"The Appellant submits that he confirmed his attendance to the interview arranged for 21st March. The screenshot of the confirmation from the Appellant has a date of 6 March 2023 however the corresponding email received by the Respondent is dated 10 March."

8. The respondent had adduced evidence that is referred to in paragraph [12] regarding an increase in cases wherein an applicant has claimed to provide correspondence relating to an interview which has been digitally altered, portraying either a different date of correspondence, a different message, or both.

9. Having considered the evidence before the Tribunal the Judge concluded:

"16. Whilst I accept that both the Appellant and sponsor have had a connection to addresses in Swindon and Slough, I do not find the evidence to be conclusive of their living in the same household since his arrival in the UK, for which there is no apparent explanation. Had they been living in the same household during this time I consider it reasonable for more evidence to have been readily available to them to submit in support of their appeal."

17. I accept that the couple have had a child together who sadly passed away. However, this is not conclusive proof of a genuine relationship nor does it explain the discrepancies in the evidence detailed above.

18. In the absence of a satisfactory explanation for the above I am satisfied that the Respondent had reasonable grounds to find the marriage to be one of convenience. The burden of proof then falls to the Appellant which he has failed to discharge.”

THE GROUNDS OF APPEAL

10. The applicant refers to the decision of the Upper Tribunal in *Papajorgji (EEA spouse - marriage of convenience)* [2012] UKUT 00038(IAC) in which the Upper Tribunal said:

“30. ... a marriage of convenience in this context is a marriage contracted for the sole or decisive purpose of gaining admission to the host state. A durable marriage with children and co-habitation is quite inconsistent with such a definition.”

11. The appellant claims that he and his partner had a child who had died shortly before the hearing of the appeal. He had provided his son’s birth and death certificate and that the respondent had not previously raised any question as to the addresses at which the appellant had lived. There was also evidence before the FtT of a joint account held by the appellant and his partner before the marriage.

12. Permission to appeal was granted by First-tier Tribunal Judge Brannan on 7 March 2024.

DECISION

13. As I have said, there was no appearance by or on behalf of the appellant at the hearing before me. Mr Lawson adopted the respondent’s Rule 24 response dated 13 March 2024.

14. There is no doubt that it is both permissible and necessary for the respondent to be satisfied that the relationship relied upon by the appellant is genuine and any marriage is not one of convenience. In considering that question it is permissible for the respondent to arrange an interview with one or both parties to the marriage for an opportunity to be given for any doubts to be dispelled.

15. The appellant and his partner were given two opportunities prior to the respondent’s decision of 10 March 2023 to attend an interview, but the respondent claimed they failed to confirm they would attend. It was their failure to confirm they would attend and submit to an interview which gave rise to respondent’s decision that the marriage is one of convenience. Where it is suspected the marriage is one of convenience, the burden of proving that a marriage is not one of convenience lies on the appellant.

16. There is an evidential burden on the respondent and the respondent had discharged that evidential burden by establishing the appellant had been contacted on two occasions (28 February 2023 and 6 March 2023) inviting

him and his partner for interview and the appellant had failed to confirm they would attend. There was sufficient evidence that the respondent had grounds to suspect that this was a marriage of convenience and on appeal, it was for the appellant to show that his marriage is not one of convenience.

17. Before the hearing before the FtT, the respondent had given the appellant and his partner two further opportunities (on 12 and 18 September 2023) to confirm they would attend an interview (on 21 and 27 September 2023), but again, the appellant had failed to confirm they would attend as required. The judge was entitled to have regard to that evidence and the lack of any explanation from the appellant for the failure. In considering the appeal and the appellant's claim that he had contacted the respondent by email on 6 March 2023 to confirm him and his partner would attend an interview scheduled for 21 March 2023, the judge was plainly entitled to have regard to the evidence of the respondent regarding an increase in cases wherein an applicant has claimed to provide correspondence relating to an interview which has been digitally altered and to reject the appellant's claim that he had replied.
18. By the time of the hearing before the FtT, the evidence was that the appellant failed to confirm that he and his partner would attend for interview on four separate occasions. The judge had in mind throughout that the appellant and his partner had a child and the judge gave cogent reasons for why she did not accept the appellant's explanation for his failure to confirm as required, having regard to the evidence relied upon by the appellant and the evidence provided by the respondent. The judge did not expressly refer to the evidence of a joint bank account but had regard to evidence before the FtT regarding the addresses at which the appellant has lived.
19. The appellant and his partner have failed on four occasions to submit to interview by the respondent. They invited the FtT to determine the appeal in their absence. The appellant has failed without explanation to attend the hearing before me to elaborate upon the grounds of appeal and assist me with his appeal, particularly regarding the materiality of the failure to have regard to the evidence of the joint bank account. Beyond the evidence of a joint bank account, there was no explanation before the FtT regarding the background to that account and how it was operated or the credits and debits to and from the account. Standing back and reading the decision of the FtT as a whole, I am satisfied the Judge was entitled to conclude that there were lacunae in the evidence which cast doubt on the reliability of the claims made by the appellant and to dismiss the appeal for the reasons that she gave.
20. It follows that I dismiss the appeal.

NOTICE OF DECISION

21. The appeal is dismissed. The decision of First-tier Tribunal Judge Robertson dated 14 December 2023 stands.

V. Mandalia
Upper Tribunal Judge Mandalia

Judge of the Upper Tribunal
Immigration and Asylum Chamber

31 October 2024