



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

Appeal Number: IA/37412/2014

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 8<sup>th</sup> April 2015**

**Determination  
Promulgated  
On 17<sup>th</sup> April 2015**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE JUSS**

**Between**

**MR DAVID ESSI  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr A Adjarho (Solicitor)

For the Respondent: Mr S Kandola (HOPO)

**DECISION AND REASONS**

1. This is an appeal against the determination of First-tier Tribunal Judge Jeromes, promulgated on 30<sup>th</sup> December 2014, following a hearing at Birmingham on 16<sup>th</sup> December 2014. In the determination, the judge allowed the appeal of David Essi, the Appellant, whereupon the Respondent Secretary of State, subsequently applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

## **The Appellant**

2. The Appellant is a citizen of Nigeria, who was born on 7<sup>th</sup> August 1979. He applied for a residence card as confirmation of his right of residence under European Community law, as the spouse of an EEA national, namely, Ludmila Eugenia Fermina, claiming that she exercised treaty rights in the UK. The application was dated 28<sup>th</sup> January 2014. The Respondent Secretary of State issued her refusal letter on 9<sup>th</sup> September 2014. Subsequently, the Appellant appealed on 22<sup>nd</sup> September 2014.

## **The Judge's Findings**

3. The judge was hearing an appeal "on the papers" and there was no oral evidence before him. Neither were any of the parties obviously present. The refusal letter is predicated on three reasons.
4. First, that the Appellant failed to supply relevant documentation showing that he and the Sponsor are in a genuine relationship.
5. Second, that he failed to attend the marriage interviews on two occasions.
6. Third, that the fact that the marriage took place only when the Appellant's leave to remain expired was significant and went to the genuineness of the marriage.
7. The judge looked at the reasons for the Appellant's non-attendance for the interviews. When he was first asked to attend a marriage interview on 6<sup>th</sup> June 2014, he failed to attend, and gave his reasons as "not feeling well," and maintained that he had written to the Respondent by email which the Respondent acknowledged. The judge observed, however, that  

"There is no copy of the email, medical report or acknowledgement in the bundle although there is a copy of a letter from the Appellant's GP dated 2<sup>nd</sup> June 2014 which confirms he contacted his GP to request a certificate to cover absence from work." (Paragraph 15)
8. This is, obviously, not the same thing. Second, when he was again invited for interview on 2<sup>nd</sup> September 2014, the Appellant again failed to attend and now explained that he and the Sponsor missed their train, but then says at paragraph 12 of his witness statement that, "my solicitors sent our flight tickets to the Home Office explaining why we did not attend which the Home Office acknowledged." Again, however, "there is no copy of the letter/email from the solicitors, copies of the tickets, or acknowledgements in the bundle" (see paragraph 17 of the determination).
9. It was in these circumstances, that the judge looked at the law applying in the case of marriages of convenience. Due regard was given to the established decision of **Papajorgi (Greece) [2012] UKUT 0038**. The judge observed that "there is no burden at the outset of an application on a Claimant to demonstrate that the marriage to an EEA national is not one of convenience." The judge added, however, that, in view of the timing of

the marriage (which was after the Appellant's leave to remain expired) and given the failure to attend the marriages interviews, "the Respondent had evidence justifying reasonable suspicion that the marriage was entered into for the pre-dominant purpose of securing residence rights" (paragraph 19).

10. Significantly, the judge then went on to state that,

"Although I am troubled by the failure of the Appellant and the Sponsor to attend the interviews and I am not satisfied with their uncorroborated explanations, on consideration of all the evidence I conclude that the Appellant has discharged the evidential burden of addressing those concerns (and resulting suspicions) as there is ample documentation showing that he had been co-habiting with the Sponsor since the marriage." (See paragraph 19).

11. The appeal was allowed.

### **Grounds of Application**

12. The grounds of application make two essential points. First, that none of the documents submitted in the evidence are jointly addressed and they merely show that the Appellant and his Sponsor are living at the same address. They do not go to the genuineness of the marriage. Second, the Respondent notes that the parties were given the opportunity on two occasions to attend the marriage interview but failed to do so and the reasons they have not given for not doing so are uncorroborated.

13. On 11<sup>th</sup> February 2015, permission to appeal was granted.

14. At the hearing before me on 8<sup>th</sup> April 2015, Mr Kandola, appearing on behalf of the Respondent Secretary of State, stated that additional reasons were provided in the refusal letter to say that the Appellant only got married after his visa expired. Given that this is the case, paragraph 19 of the determination fell into error. It was not at all clear why the judge had allowed the appeal. Of course, the judge refers to "ample documentation" but this is not addressed to both parties and so it cannot be said that the marriage was a genuine and subsisting one. Indeed, the judge does not even make any findings in relation to the marriage, where it took place, how the parties met, and so forth.

15. Second, given that the appeal was requested to be "on the papers" the judge should have been much more rigorous in his approach, especially where the parties had elected not to attend. There is no interview record here because the Appellant and the Sponsor chose not ever to be interviewed.

16. For his part, Mr Adjarho submitted that the judge did properly set out all the concerns that he had, and given that he did in fact do so, before coming to a decision which allowed the appeal, only showed that all the relevant matters had been taken into account. Nothing of relevance had

been overlooked. In these circumstances, it could not be said that there was an error of law.

### **Error of Law**

17. I am satisfied that the making of the decision by the judge involved the making of an error on a point of law (see Section 12(1)) of **TCEA [2007]** such that I should set aside the decision. My reasons are as follows. First, there is the application of the Tribunal decision in **Papajorgi (Greece) [2012] UKUT 0038**. What this states is that whereas there is “no burden at the outset of an application on a Claimant to demonstrate that a marriage to an EEA national is not one of convenience,” there is, however, “an evidential burden on the Claimant to address evidence justifying reasonable suspicion that the marriage is entered into for the predominant purpose of securing residence rights.”
18. This is a case where the Appellant did not attend, for whatever reason, marriage interviews on two separate occasions. It is also a case where he got married after his leave to remain expired. In these circumstances, the Respondent Secretary of State was bound to have held a justifiable and reasonable suspicion, especially, as the documentation that the Appellant also relied upon, was not addressed in the joint names of himself and his Sponsor, Miss Ludmila Eugenia Fermina. Whereas it is clear that the judge has painstakingly approached the matter before him, and even observed that “I am troubled by the failure of the Appellant and the Sponsor to attend interviews,” and adding that what they had was “their uncorroborated explanations” which she did not accept. In light of this, it simply did not follow that the “ample documentation showing that he has been co-habiting with the Sponsor since the marriage” discharged the burden of proof upon the Appellant, given that the judge had already referred to the “uncorroborated explanations” with respect to non-attendance, and he remained troubled by this. There was also no reference to the fact that the marriage had taken place after the leave of the Appellant had expired. Furthermore, as Mr Kandola points out, no findings were made in relation to how the parties got married, or where, or how. In these circumstances, there must be an error of law.

### **Re-Making the Decision**

19. I have re-made the decision on the basis of the findings of the original judge, the evidence before him, and the submissions that I have heard today. I am allowing this appeal to the extent that it is remitted back to the First-tier Tribunal under Practice Statement 7.2, to be determined by a judge other than Judge Jeromes so that the parties can attend and be cross-examined on the evidence that they wish to rely upon.
20. Mr Adjarho submitted that this would be an opportunity for the Secretary of State to invite the Appellant and the Sponsor again for an interview, but

this must be entirely a matter for the Respondent, having attempted to do so on two separate occasions unsuccessfully.

**Notice of Decision**

The decision of the First-tier Tribunal involved the making of an error of law such that it falls to be set aside. I set aside the decision of the original judge. I re-make the decision as follows. This appeal is allowed to the extent that it is remitted back to a judge of the First-tier Tribunal to be determined by a judge other than Judge Jeromes de novo.

No anonymity order is made.

Signed

Date

Deputy Upper Tribunal Judge Juss

15<sup>th</sup> April 2015

**TO THE RESPONDENT**  
**FEE AWARD**

I have dismissed the appeal and therefore there can be no fee award.

Signed

Date

Deputy Upper Tribunal Judge Juss

15<sup>th</sup> April 2015