IAC-FH

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Numbers: IA/18993/2014

THE IMMIGRATION ACTS

Heard at Field House **Decision & Reasons Promulgated**
On 4 January 2016 **On 27 January 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE HUTCHINSON

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT
Appellant
and

MS EUREDICE RITA ZIRIGNON
(ANONYMITY DIRECTION NOT MADE)
Respondent

Representation:
For the Appellant: Mr L Tarlow, Senior Home Office Presenting Officer
For the Respondent: Mr M. Al-Rashid, Counsel instructed by David A. Grand

DECISION AND REASONS

The Appeal

1. Although the Secretary of State is the appellant in this case, for ease of reference I shall refer to the parties as they were before the First-tier Tribunal.

2. Ms Euredice Rita Zirignon is a citizen of the Ivory Coast born on 2 October 1972. In a decision, dated 2 April 2014, the Secretary of State refused to issue her with a permanent resident card in accordance with Regulation 15(1) of the Immigration (European Economic Area) Regulations 2006 (the

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EEA Regulations). First-tier Tribunal Judge Woolf allowed the appellant's appeal under the EEA Regulations. Permission to appeal was granted on the two grounds advanced: that the Judge may have materially misdirected herself in requiring a higher standard of proof and in failing to give proper weight to the evidence provided; and that the judge failed to make clear findings as to on what basis the appellant was entitled to a residence card.

3. The respondent in the Reasons for Refusal letter asserted that the Home Office had evidence that the appellant's EEA sponsor was previously married under a different name on 23 October 1997. The respondent was not satisfied therefore that the marriage was genuine as the appellant had not submitted a Decree Absolute for the sponsor. The marriage certificate stated that he was a bachelor, rather than a divorcee.

Ground 1

4. Judge Woolf considered the evidence in some detail and made a clear finding that there were no reasonable grounds for a suspicion that the marriage was invalid. She considered three witness statements provided by the Home Office. The first of these refers to a British national, Mr Grinion Mathuron Guei, and provides details of this individual's wife and children. The second statement was from the same Home Office official, Ms Freakley of Criminal and Financial Investigations, Heathrow and provided details of the appellant's spouse, Jean Louis Kemoagna, a French national and their children. The third witness statement from another Home Office Official, Mr Brown, indicates that Ms Freakley gave him some images of Mr Guei and Mr Kemoagna to identify if they 'were one and the same person'. Mr Brown concluded from an examination of the photographs that it was the same person.

5. However Judge Woolf made a clear finding that the evidence provided fell 'way short of establishing any reason for believing that they are one and the same person'. Although the respondent's grounds of appeal argued that the evidence provided by the respondent 'was far more substantial than the FTJ stated' Mr Tarlow conceded that he could point to no evidence other than the witness statements (and he conceded that it was only the third witness statement that made any allegation that the two individuals were the one person) and one photocopy of identity pictures of both individuals side by side. Although the third witness statement refers to a number of exhibits showing scanned comparisons of different parts of the individuals' faces, these were not provided to either the First-tier Tribunal, or at all.

6. Neither was there any information or evidence as to what had led to these comparisons being made in the first place. No particulars were given of the expertise of Mr Brown that enabled him to make this comparison, nor any methodology as to how he made his comparisons (in addition to the fact that a number of the scans referred to were not produced). Although Mr Tarlow asserted that weight should be placed on

the expertise of the immigration officials making the witness statements, without further the Judge was entitled to reach the conclusion that the appellant had no case to answer on the basis of the evidence before the Judge. The respondent had made a number of unsupported assertions and there was for example, as noted by the Judge, no adequate evidence of the marriage certificate in relation to the claimed marriage in another identity.

7. The burden of proof in appeals considered under the EEA Regulations is with the appellant to demonstrate that they meet the requirements of the EEA Regulations and the Judge correctly directed herself in this regard at [25]. As the Judge identified this was not a marriage of convenience case but the judge applied the jurisprudence of Papajorgji (EEA spouse marriage of convenience) [2012] UKUT 38 as analogous and was satisfied that the respondent would bear an evidential burden to produce sufficient evidence that there was a reasonable suspicion that the marriage was not valid. The respondent did not dispute this approach but was of the view that the Judge had failed to properly apply the guidance. That is not the case. Although, as stated by the Court of Appeal in Agho [2015] EWCA Civ 1198, (in approving the Papajorgji approach) at paragraph 13 that 'the evidential burden may shift to the applicant by proof of facts which justify the inference that the marriage is not genuine' Judge Woolf reached a decision that was open to her in not being satisfied that the respondent had 'by proof of facts' justified the inference that the marriage is not genuine. It was not the case that the Judge required the respondent to prove that the marriage was not valid, but rather that the Judge was not satisfied that there was sufficient evidence adduced to shift the burden to the appellant.

8. Further, as cited in Agho, the Upper Tribunal in Papajorgji (paragraph 39) confirmed in relation to whether a marriage is one of convenience that:

> "... where the issue is raised in an appeal, the question for the judge will therefore be 'in the light of the totality of the information before me, including the assessment of the claimant's answers and any information provided' am I satisfied that it is more probable than not ..."

9. Judge Woolf also considered at [39] that there was nothing in the appellant's evidence that undermined the credibility of her claims as to the marriage and that there was 'no discrepancy of any note'.

10. In addition, although the permission judge referred to the appellant herself having been married before, that was not the case (and such was not alluded to either in the refusal letter or Judge Woolf's findings). Mr Tarlow did not pursue this additional ground which I am satisfied has no merit.

11. I am satisfied that there was no material error of law therefore and there is no merit in Ground 1.

Ground 2

12. Mr Tarlow submitted that the Judge's findings that the appellant was entitled to a permanent residence card 'needed more explanation'. The Judge recorded the evidence at [10] that although separated and divorce proceedings had been issued, the appellant was still married to the EEA national. The Judge's findings included, as already noted, that there 'was no discrepancy of any note'. It is implicit in those findings that the Judge accepted that the marriage was valid and had not been dissolved.

13. It was also clear from the refusal letter dated 2 April 2014 that, although the appellant had been unsuccessful in a previous (2008) application and appeal (in 2010) due to the lack of adequate evidence that her EEA sponsor had been exercising treaty rights for the requisite 5 year period, further information (including Job Centre Plus Tax Year Contributions/Credits for a nine year period (from 2000 to 2009) for the EEA sponsor) was provided with the appellant's further application. Although the findings of the Judge in 2010 would have been a starting point, Judge Woolf was entitled to find as she did that no issue had been raised (either in the refusal letter or by the presenting officer) in relation to the new employment records produced in respect of the application and appeal before her.

14. The Judge was satisfied on the basis of the unchallenged evidence before her therefore that the appellant had demonstrated that her EEA sponsor had been exercising treaty rights in the UK for a continuous period of 5 years. This was a properly reasoned conclusion in light of all the evidence. The respondent's ground of appeal, that the judge did not make clear findings on a material matter, does not therefore bear scrutiny and amounts to no more than a disagreement with the Judge's findings.

Notice of Decision

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

Anonymity

16. Although the First-tier Tribunal Judge made an anonymity order, on account of the appellant's children, there are no details in relation to those children in this appeal. I see no reason therefore to continue that order.

Signed Date: 5 January 2016

Deputy Judge of the Upper Tribunal Hutchinson