Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: EA/01384/2018

THE IMMIGRATION ACTS

Heard at: Field House
On 18th March 2019

Decision & Reasons Promulgated
On 28th March 2019

Before

UPPER TRIBUNAL JUDGE BRUCE

Between

Adimbola Bosede Boboye
(no anonymity direction made)

Appellant

And

The Secretary of State for the Home Department

Respondent

For the Appellant: **Mr Rashid, Counsel instructed by Carlton Law Chambers**
For the Respondent: **Mr Melvin, Senior Home Office Presenting Officer**

DECISION AND REASONS

1. The Appellant is a national of Nigeria born on the 14th March 1975. She appeals with permission the decision of the First-tier Tribunal (Judge Shand) to dismiss her appeal.

2. The Appellant had brought an appeal in the First-tier Tribunal against the Respondent's decision to refuse to grant her a permit confirming a 'retained' right of residence under the Immigration (European Economic Area) Regulations 2016 ('the Regs'). The reason that the Respondent gave for his decision (set out in a letter dated

the 16th January 2018) was that his previous grant of a family permit notwithstanding, the Respondent now believed that the Appellant's marriage to her French husband was a sham. As a marriage of convenience is no marriage at all as far as the Regs are concerned, the application was refused.

3. The First-tier Tribunal directed itself [at §16] as follows:

> "In relation to marriages of convenience there is no burden at the outset for an applicant to demonstrate that his marriage to an EEA national is not one of convenience. The burden of proof is on the respondent to adduce evidence justifying a reasonable suspicion that the marriage was entered into for the predominant purpose of securing residence rights. Only once the respondent has put forward such evidence does the burden shift to the appellant and the burden on the appellant is an evidential rather than a formal legal burden. (Papajorgi (EEA Spouse – marriage of convenience) Greece [2012] UKUT 00038 (IAC)). The standard of proof is the balance of probabilities".

4. It then identified the following matters as giving rise to a reasonable suspicion on the part of the Respondent. The Appellant could give only superficial evidence about her husband's family. There was no credible explanation as to why the Appellant had not met her in-laws during her three-year marriage. The Appellant had stated that she and her husband both wanted children but despite having difficulties in conceiving they had not consulted a doctor about this. The First-tier Tribunal was satisfied that these reasons were sufficient to give rise to the 'reasonable suspicion'. In doing so, at paragraph 18 of the determination, it noted that the Appellant's representative at the hearing had not disputed that the reasonable suspicion test had been met. It was then for the Appellant to meet this evidential challenge. In order to do so she gave oral evidence.

5. The First-tier Tribunal was not impressed. It found the Appellant's evidence to be hesitant and vague. It found that the Appellant sought to evade questions being put to her. It found numerous discrepancies in her evidence. It was, for instance, unimpressed that the Appellant was not able to immediately name the witness to her wedding. After some hesitation she had managed to give his first name, but was unaware of his surname. This was despite the fact that she claims to have shared a house with this gentleman for some time after the marriage. Further, at her interview the Appellant had suggested that her in-laws had failed to attend the wedding because it was too expensive; at the hearing, she was unsure about whether her husband has in fact invited them, and explained their absence by referring to "transport" or "work". The Appellant's credibility was further damaged by inconsistencies arising in respect of a witness who provided a statement for the hearing, Mr Anthony Membu. Mr Membu stated that he had got to know the Appellant and her husband when they lived in the same property in Clapham Park, London: "we became acquaintances as neighbours". At the hearing, the Appellant revealed that Anthony Membu was a relative of hers. When this inconsistency was put to her the Appellant attempted to explain it by saying that they were two different Anthony Membus. The Tribunal rejected this is nonsensical and was left in no doubt that it is a lie. Having considered all of the evidence, the first-tier Tribunal

found the legal burden on the Respondent to be made out and the appeal was accordingly dismissed.

6. I deal with each of the appellant's grounds in turn.

7. First, it is submitted that the First-tier Tribunal failed to direct its enquiry to the parties' intentions at the inception of marriage. Mr Rashid submitted that the only thing that mattered was whether the Appellant and her husband had entered into the marriage with genuine intentions. He submitted that none of the reasoning in the determination was logically capable of going to that issue.

8. Mr Rashid is of course correct to say that it is the moment of marriage that should be the focus of any enquiry. That is not to say, however, that evidence relating to the subsistence of the marriage is entirely *ir*relevant. If an applicant is quite unable to provide any detailed information about her spouse, or give consistent evidence about their lives together, or produce any reliable witnesses in corroboration, the Tribunal is plainly entitled to take those matters into account when evaluating the credibility of the marriage overall. Where Appellant has been found to be devoid of credibility, as this Appellant has, the First-tier Tribunal is entitled to draw inferences about her intentions at the time that the marriage was entered into.

9. The second ground is the complaint that the First-tier Tribunal appears to have overlooked the fact that the Appellant had previously been issued with a family permit under the Regulations. It is right to say that this information appears nowhere in the determination. I am not, however, persuaded that this was of any particular significance in the context of this appeal. The fact that the Secretary of State had granted the Appellant a residence permit only established one thing: that at that date on the evidence available it was accepted that she was the wife of the EEA national concerned. The Secretary of State was not bound *ad infinitum* to the view he took of that application. The Secretary of State is perfectly entitled to reach a different conclusion, on the basis of different evidence, in respect of a subsequent application. No estoppel arises here. Nor was this a case, as suggested by Mr Rashid, where the Secretary of State was bound by his own concession of fact. Each application is to assessed on its own merits, and if, in a later application the Secretary of State has access to more information than was available to him the first time round, it is plainly right that he take that information into account.

10. The third ground relates to the approach taken by the First-tier Tribunal to the burden and standard of proof. I have set out the Tribunal's self-direction above; I note that Mr Rashid took no issue with it. He submitted however that the Tribunal had erred in its findings about what might legitimately found a 'reasonable suspicion'.

11. The written grounds suggest that the matters identified in the refusal letter were in themselves insufficient to discharge this burden. I reject that. I have read the interview record myself and I am satisfied that it was reasonably open to the decision maker to conclude that the applicant knew very little about her husband or his

family. She did not know why he had come to live in England; she was unable to say whether his parents worked or what their ethnic origins were; she did not know whether his sister was in education, or whether he had grandparents. She was unsure about the name of the witness to her marriage ceremony. She was unable to say what her husband did with his money. It is also notable from the interview record that the applicant frequently had to have questions repeated or for very straightforward questions to be clarified. More significantly the purposes of this appeal, it is clear from the determination that the Appellant's representative before the First-tier Tribunal expressly conceded that that burden was discharged. That, in itself, dispenses with this ground.

12. I should add that this concession also deals with a point Mr Rashid sought to make in his oral submissions, considerably widening this ground of appeal. Mr Rashid questioned why the Respondent had invited the Appellant for interview in the first place. He suggested that absent any evidence of wrongdoing, there was no justification for the interview in the first place. I note for the record that this ground was also hopeless. I was shown no policy to indicate that the Respondent will only invite applicants to interview once a reasonable suspicion has been formed; the processes and systems that the Respondent has in place are, within reason, a matter for him.

13. Having read the interview, and the record of proceedings as recorded in the determination, I am wholly satisfied that the Respondent, and the First-tier Tribunal were entitled, on the evidence before them, to conclude that the Respondent had discharged the legal burden and shown this marriage to be a sham.

Decisions

14. The determination of the First-tier Tribunal contains no material error of law and it is upheld.

15. There is an order for anonymity.

Upper Tribunal Judge Bruce
20th March 2019