



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

Appeal Number: IA/05994/2013

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 10 October 2013  
Prepared 10 October 2013**

**Determination Sent  
On 16 October 2013**

**Before**

**UPPER TRIBUNAL JUDGE MCGEACHY**

**Between**

**COLLINS MOHAMMED AGHO**

**and**

Appellant

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

Respondent

**Representation:**

For the Appellant: Ms N Nnamani, of Counsel instructed by Messrs Samuel Louis Solicitors

For the Respondent: Ms Z Kiss, Senior Home Office Presenting Officer

**DETERMINATION AND REASONS**

1. The appellant, a citizen of Nigeria born on 13 February 1984 appeals against a decision of Judge of the First-tier Tribunal Pears who in a determination promulgated on 11 July 2013 dismissed the appellant's appeal against a decision of the Secretary of State to refuse him leave to remain as the spouse of an EEA national.

2. The appellant arrived in Britain as a student on 25 April 2010 having been granted leave to remain until 9 April 2012.
3. On 2 April 2012 he applied for leave to remain on the basis of a marriage to a Miss Kozo Bernadette Raducanou, a French national.
4. The Secretary of State considered the application and stated that:-

“In order to qualify for a residence card, you are required to provide evidence that you are related to your EEA sponsor as claimed. As evidence of this your representatives supplied a marriage certificate. However, a visit was conducted to your address, and it was found that you and your EEA sponsor do not, never have, resided at this address. Therefore, this department cannot accept that you are related as claimed to your EEA sponsor.

You are also required to provide evidence that your EEA sponsor is exercising treaty rights in the United Kingdom. As evidence of this, your representatives supplied wage slips. However this department has been unable to verify this employment.

Therefore it has been decided to refuse to issue the confirmation that you seek with reference to Regulation 6 and 7 of the Immigration (European Economic Area) Regulations 2006.”

5. The appellant’s appeal was heard by Judge Pears on 8 July 2013. The appellant had submitted a bundle of documents which included bank statements, a tenancy agreement, a witness statement and payslips and an orange telephone bill for the sponsor.
6. The respondent had produced at the hearing a report from a Sergeant Jenkinson who, at the request of the UKBA had visited the house where the appellant and Ms Raducanou had claimed to be living. The visit was made on 18 December 2012. The police officer wrote:-

“I attended the address at 23 Manor Grove on Tuesday, 18 December 2012 around 19:30 hours.

The premises consist of an ex local authority house which is now used as bedsits and has five bedrooms, one kitchen and one bathroom.

Initially I had trouble gaining entry but eventually got in and spoke to an African female who claimed to be visiting and denied any knowledge of the other occupants of the house.

I left a note advising I would be reporting the premises as a house of multiple occupancy to the local authority.

At 22:00 hours I received a phone call from “Luke” the landlord and a male who claimed to be his solicitor. I asked the solicitor to send me an email so I could legitimise who they were they did this the following day.

The owner of the premises is Mr Basil Ukonu 07941 257966.

The solicitor and managing agent is Sam Ezeh.

Samuel Louis Solicitors  
17 Deptford Church Street  
London SE8 4RX

I was informed that they were not aware of a tenant by the names of "Collins" or "Kozo" during the late night call mentioned above, I had left these details in the note.

On speaking to the managing agent the next day he stated he was not aware of these tenants. I had informed him that this was an old enquiry from a year earlier November 2011. He was not aware of these people/tenants.

Regards

Jeff Jenkinson"

7. The report from Sergeant Jenkinson was the basis on which the Secretary of State decided that the marriage was not genuine.
8. The judge noted that the appellant, in his witness statement was stating that he was separated from his wife in May 2013 and that their relationship had irretrievably broken down.
9. The judge correctly noted that the appellant could not qualify under the terms of Regulation 17 as the term "spouse" therein did not include a party to a marriage of convenience.
10. The judge noted that there was no burden on a claimant to prove that they were not a party to a marriage of convenience unless the circumstances known to the decision maker gave reasonable grounds for suspecting that that was the case. Where there was such suspicion the matter required further investigation and the claimant should be invited to respond on the basis of the decision by producing evidential material to dispel it.
11. The judge found, relying on the decision of a First-tier Judge in an appeal brought by Ms Raducanou that she was a qualified person. The issue therefore turned on whether or not the appellant was a party to a marriage of convenience.
12. The judge set out the evidence of the appellant which was that they had lived at 23 Manor Grove between late 2010 and their separation. He said that his wife had moved in about March 2011.
13. He went on to say that the landlord was Luke Maroy Collins or Okun although the tenancy agreement referred to him as Basil Ukonu. He noted

that 23 Manor Grove was in multiple occupation and stated that page 11 of the appellant's bundle referred to Kozo Bernadette Raducanou in room 2 and the tenancy agreement in the appellant's name referred to room 3. The appellant had described it as a shared house.

14. He noted the appellant's bank statement which had entries which the appellant said represented rent although the rent was different from that in the tenancy agreement.

15. The judge noted it was accepted by both sides that the police had visited 23 Manor Grove on 18 December 2012 and in paragraphs 16 and 17 onwards he referred to the appellant's witness statement and to the application form. He wrote:-

"16. The Appellant says in his witness statement which he expressly adopted and signed in front of me. 'However I was aware of a visit by officers from Peckham Police station on 18<sup>th</sup> December 2012'. Pausing there he does not give the source of the information. 'The officers dropped their card for Collins to contact them. Our landlord was contacted and he collected the card. Incidentally I share the same surname with my landlord'. Again pausing there he does not and he said it was a mistake on his part. He goes on 'I was contacted by my landlord regarding the visit, as he had no dealings with Peckham Police or at all. My wife and I contacted the officers and were informed that if there is any need for them to revisit or for us to come we will be notified accordingly. They also collected our numbers' and later he says that the officers met a girlfriend of a flatmate who did not know them and that given the way the premises are set out that is not surprising. He had approached her but she was not willing to assist but she had told him that she had never said he and his wife did not live there.

17. He said in the application form that they were both living at 23 Manor Grove, London SE15. His wife had been working for Sabis Infinity UK at 49 Dalkeith Road, Wellingborough, Northamptonshire from 20<sup>th</sup> February 2012 (see application form 5.1ff, E1, I2), so it appears that the Appellant's wife might have had an alternative address.

18. There are 02 accounts that indicate that his wife was receiving these addressed to her at 23 Manor Grove - see F1ff; there are bank statements addressed to her at that address at G1ff, page 17ff of the Appellant's bundle and a TV licensing department - G9 - page 11 of the Appellant's bundle.

19. There are also documents addressed to the Appellant at that address - Santander - G8 - Lloyds Bank - page 15 of the Appellant's bundle. Indeed there are election notices addressed to each of them at 23 Manor Grove - H1 and H2 - page 13 of the Appellant's bundle. There is an EU health card addressed to Kozo Bernadette Raducanou at 23 Manor Grove and a P60 of the Appellant.

20. It is accepted that the Appellant and his wife are now separated and going through a divorce but it was not suggested by the Respondent that that was a ground for rejecting the Appellant's application.
  21. The police report relied on by the Respondent says that Sergeant Jenkinson attended on 18<sup>th</sup> December 2012 at 23 Manor Grove and did indeed speak to an African female who claimed to be visiting and denied any knowledge of other occupants. He left a note and received a telephone call from Luke the landlord and a man who claimed to be his solicitor and the solicitor sent a email the next day giving the details of the owner of the premises who was said to be Basil Ukou and the solicitor and managing agent being Sam Ezeh of Samuel Louis Solicitors (who I note are the solicitors acting for the Appellant on this appeal although not on the initial application).
  22. The officer was told they not aware of a tenant by the names of Collins or Kozo and the managing agent confirmed this the next day."
16. In paragraphs 24 onwards the judge set out his findings. The judge stated that there is evidence from a police officer which he accepted that neither the appellant nor his wife was known to the landlord nor the managing agent of 23 Manor Grove and that on the basis of the police report that neither his wife nor he were living at 23 Manor Grove on 18 December 2012 at a time when the appellant claimed that he was living there as was his wife and they were living together as man and wife. He went on to find that there is reasonable suspicion on the part of the respondent the appellant was a party to a marriage of convenience based on the police report and that in phrasing the refusal notice as it was the respondent was informed that the appellant was not the spouse of an EEA national for the purposes of the application. He went on to say in paragraphs 29 onwards:-
- "29. I found the Appellant less than convincing in his demeanour and the manner he gave evidence. Further there are a number of mattes that cause me to doubt his account of what happened on or immediately subsequent to the police visit; he gives no names, there is no supporting evidence of his account, there is no record of him or his wife having called the police and there is the inherent implausibility of the landlord contacting him but the landlord denying to the police that he knew anything about the Appellant.
30. I accept that there is documentary evidence that show that 23 Manor Grove was used as postal address by the appellant and his wife and that at least in the period of late 2012 there was money that was stated to be rent. Equally it is clear that there is evidence that at times the Appellant was or might have been living elsewhere, as she is now.
  31. I find in the light of the totality of the information before me, including the assessment of the claimant's answers or any information provided, I am satisfied that it is more probable than not this is a marriage of convenience."

17. He therefore found the appellant had not shown that he was the spouse of an EEA national within the meaning of the Regulations.
18. He went on to consider and dismiss the claim that the appellant's rights under Article 8 of the ECHR were infringed by the decision.
19. The grounds of appeal refer to what the judge wrote in paragraphs 26 and 27 of the determination and refer to an e-mail sent to Sergeant Jenkinson by Samuel Louis Solicitors on 19 December 2012. That e-mail wrote:-

"Dear Mr Jenkinson

Further to my telephone conversation last night regarding above property whereas I understand that you conducted a visit to same yesterday looking for a Mr Collins and/or Margaret. These persons are unknown to us or our client Mr Basil Ukonu (07941 25796). Unless there is any way we can assist you, please take note that the individuals sought are unknown to us.

Kind regards

Luke  
Samuel Louis Solicitors."

It was argued that it was apparent from that that the officers were in fact looking for different persons rather than the appellant and his wife. It was claimed that therefore the judge had made wrong assumptions without evidence that the people the officer was looking for were the appellant and his wife when in fact they were looking for "Mr Collins and/or Margaret". Given that the report did not mention a "Margaret" I consider that the grounds of appeal are disingenuous.

20. An application was made to adduce that e-mail as further evidence.
21. It was argued that the findings of the judge were perverse and irrational.
22. At the hearing of the appeal before me Ms Nnamani relied on the grounds of appeal arguing that the police report could not be relied on and that the basis of that assertion was the e-mail from "Luke" of Samuel Louis Solicitors to Sergeant Jenkinson. She emphasised that the Regulations did not require that the parties should live together but in any event there was ample evidence that they had done so - she referred to the documents from Orange, the sponsor's payslips and the documents in the appellant's name from Santander and Southwark Council as well as his bank statements and utility bills. She further referred to evidence relating to a European health card in the name of the sponsor.
23. She accepted that only the appellant had given evidence at the hearing stating that by that stage the marriage had broken down although she did not go as far as the appellant in his statement to say that the relationship had broken down irretrievably.

24. With regard to the comment by the judge in paragraph 17 that the appellant's wife might have had an alternative address given that she had been working for a company in Northampton she stated that in any event the appellant's wife had changed jobs but the reality was that the payslips gave the address of the company for which she had worked.
25. She emphasised that she considered it wrong for the respondent to rely on the police report and stated that the findings of the judge were inadequate.
26. Ms Kiss asked me to find there was no error of fact and the conclusions of the judge were entirely logical particularly with regard to where the appellant's wife would have been living when she was employed by a company in Northamptonshire. She stated that the judge was entitled to look at all the evidence and reach the conclusions which he had.
27. Ms Nnamani further replied referring to the documents showing that the appellant's wife had lived at 23 Manor Grove. She claimed that it was clear that the judge had not properly assessed the evidence that the appellant and the sponsor were living together.
28. I find that there is no material error of law in the determination of the judge. The reality is that there was no direct evidence from the sponsor. The only evidence relating to her are the orange bills, a television licence (which refers to room 2) at 23 Manor Grove, the letter from European Health Insurance, her bank statements and a letter from Southwark Council. It is correct however that the payslips from Sabis - Infinity UK Limited give her address as 23 Manor Grove. The reality is that 23 Manor Grove was a house in multiple occupation and even if it were accepted that at some time both the appellant and Miss Raducanou had been living there, there was nothing to suggest that they were living there together and in particular the evidence of the television licence which shows Miss Raducanou in room 2 and the tenancy agreement which shows the appellant in room 3 indicate that in fact they were not living together. There are no utility or other bills in their joint names - they certainly did not have a joint bank account.
29. Moreover I consider that the comment of the judge regarding the fact that given that Sabis Infinity UK was in Northamptonshire Miss Raducanou might well have had an alternative address was a comment which he was entitled to make. He did say that it "appears that she might have an alternative address - she did not make a finding that that was the case but this was a fact which he was entitled to take into account. The difficulties of commuting from SE15 to Northampton would certainly be considerable.
30. Turning to the issue of the police report, what the police sergeant said was that he was not aware of a tenant by the name of "Collins" or "Kozo". The reality is that those are the first names of both the appellant and the

sponsor. It would have been expected that another tenant at the property would have known of their first names.

31. The name "Margarette" is mentioned for the first time in the e-mail from "Luke" of Samuel Louis Solicitors which was sent on 19 December. He stated that "these persons were unknown to them or to their client Mr Ukonu. It is of note that, of course, the appellant is represented by Samuel Louis Solicitors who appeared also to represent the landlord. Despite that, there is no further letter from Samuel Louis Solicitors stating that the landlord of the premises could confirm that the appellant and Miss Raducanou lived at the premises.
32. The judge took all the relevant information into consideration and I consider he properly weighed up that information. The issue before him was whether or not this was a marriage of convenience. He correctly addressed himself on the law considering first whether or not the respondent was entitled to be suspicious of the marriage. He found that that was so and he was correct to do so. Thereafter the judge considered all the relevant information and reached conclusions that this was a marriage of convenience. Despite the documentary evidence showing that certain correspondence for Miss Raducanou was sent to her at 23 Manor Grove I consider that the conclusions of the judge were open to him. His conclusion was not in any way irrational nor did he apply too high a standard of proof.
33. I therefore find there is no material error of law in the determination of the judge and find that his decision dismissing this appeal on immigration grounds and further his decision to dismiss the appeal on human rights grounds will stand.

Signed

Date

Upper Tribunal Judge McGeachy