Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/24570/2013

THE IMMIGRATION ACTS

Heard at Field House	**Determination Promulgated**
On 22nd April 2014	**On 13th May 2014**

Before

UPPER TRIBUNAL JUDGE KING TD

Between

MR KOLAWOLE OLADAPO FAYOSE

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Nnamani, of Counsel instructed by Simon Bethel Solicitors
For the Respondent: Ms Everett, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant is a citizen of Nigeria born on 23rd September 1985. He entered the United Kingdom in 2009 with leave as a student valid until 31st December 2012. Shortly before the expiry of that leave he applied for a residence card as confirmation of his right to reside in the United Kingdom

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on the basis of his marriage to a Spanish national exercising treaty rights. That application was refused on 22nd May 2013.

2. The reasons for the refusal were that on 19th April 2013 the appellant and his EEA spouse attended an interview. Each were questioned separately. It is said in the reasons for refusal that a significant number of inconsistent and conflicting answers were given in the key matters of their relationship, such as to lead to the conclusion that the marriage was one of convenience.

3. The appellant sought to appeal against that decision, which appeal came before First-tier Tribunal Judge Ross on 7th February 2013. He upheld the concerns of the respondent that it was a marriage of convenience and dismissed the appeal. Grounds of appeal were submitted contending that the Judge failed to follow the guidance given in the case of **Papajorgji**. Further that the Judge had failed to consider the wider evidential context of the claim and in particular the evidence of cohabitation and the amended witness statements of the appellant and of his spouse.

4. Leave to appeal was granted and thus the matter comes before me in pursuance of the grant.

5. The burden of proving that the marriage is one of convenience is on the respondent. The standard of proof is the balance of probabilities. There is, however, an evidential burden upon the appellant to address evidence justifying reasonable suspicion that the marriage has been entered into for the predominant purpose of securing residence rights. **Papajorgji (EEA spouse – marriage of convenience) Greece [2012] UKUT 00038 (IAC)**. The Judge has set out the proper test as I so find in paragraph 5 of the determination.

6. In the reasons for refusal the interviews are tabulated in the 122 questions that were asked so as to show the answer given by the appellant contrasting that with the answer given by the EEA sponsor.

7. In many cases there is an agreement but it is said that in matters, which are of importance to the foundation in the relationship and in particular to the circumstances in which the relationship came to develop and the marriage itself, that significant contradictions exist.

8. The Judge sought to highlight some of those contradictions in paragraph 9 of the determination. Such contradictions related to when they first went out together; when and how the marriage proposal was made; where they went after the proposal was accepted to celebrate; the giving and the wearing of engagement rings and the approximate time of wedding to the application for leave to remain.

9. The Judge found at paragraph 10 that the inconsistent answers between the appellant and his wife regarding the basic matters such as their first

date, proposal, engagement/wedding rings, losing a ring and wearing a ring have not been addressed by them. He did not accept their evidence that the inconsistencies could be explained by their confusion of the questions. Significantly it was noted that neither the appellant nor his wife provided any evidence from friends or family members as to the nature of the relationship and no reasons were given why friends or family did not attend their wedding. The Judge in paragraph 12 looked at the other evidence in the bundle, in particular the photographic evidence and the evidence that the appellant and his wife shared accommodation. The Judge was not satisfied that such discharged the evidential burden upon them.

10. Ms Nnamani, who represented the appellant at the hearing before Judge Ross and represents him before me, contended that the Judge had been unduly dismissive of the explanations that had been offered for the inconsistencies. Both the appellant and his spouse had travelled overnight and arrived in the early morning for the interview. They were both stressed and it is understandable in those circumstances that errors may occur. Both gave that explanation to the Judge who was unduly dismissive of that.

11. The photographs were taken at various stages and were eloquent of a relationship. The documents as a whole were eloquent as to cohabitation. She submitted therefore that the Judge adopted an unduly restrictive approach to the evidence. In particular there were bank accounts of the appellant and payslips of the sponsor and a tenancy agreement all pointing towards their living at the same address.

12. Ms Everett, on behalf of the respondent, invited me to find that the approach taken by the Judge was a proper one in all the circumstances with cogent reasons for the suspicions as to the relationship. The inconsistencies were too powerful simply to be explained away by mistake. I was asked to find that the Judge adopted a consistent approach to the evidence in the determination.

13. A key platform of this appeal is the contention that the Judge did not have fair regard to the amended witness statements of the appellant and of his wife in which the inconsistencies were explained. I turn first of all to that statement of the sponsor dated 17th January 2014.

14. The sponsor accepts in that statement that there were inconsistencies in the answers given at the interview and that those inconsistencies occurred because of their being unaccustomed to the line of questioning. That of course was precisely the evidence which both gave to the Judge at the hearing and which the Judge did not accept.

15. At paragraph 12 of that statement she says "I can confirm that we started our relationship about a week after we met and it must have been a slip and mistake from husband to state few months later as stated in

paragraph 27 of the interview note". That again highlights the error but gives no explanation for it.

16. The Judge in the determination did not highlight every inconsistency. In particular were the inconsistencies identified by the respondent was in relation to questions 45 to 49 of the interview. So far as the EEA spouse was concerned she said that she went to see her mother in Spain and before she left there had been an argument. When she came back the appellant had told her that he missed her and asked her to marry him. The account given by the appellant was that when he asked her to marry him everything was perfect between them, things were going well and that there were no problems at all. There was no mention of any argument shortly before that event.

17. The explanation offered by the sponsor is that prior to travelling to Spain there was an argument between the two of them because she had missed her flight. He had asked her to go to the airport early so that she would not miss the flight. There was therefore a row because he had to pay for another flight the following day. It was normal for couples to have disagreements with each other. She sought to explain it as being a minor issue. The appellant in his statement at paragraph 16 describes the matter as a minor argument. They made up on the phone while she was in Spain and thus the statements made were consistent and not contradictory.

18. In paragraph 18 the EEA national says that in respect of paragraph 57 the correct date was February 2012 and that her husband was correct not to say July 2012, as she had indicated, because she had mixed the month up due to anxiety and pressure in the course of the interview.

19. In terms of where they had gone after the engagement he said that they went to the Presidential restaurant, a few days later they went to 516 Old Kent Road. It may be so but it still does not explain why she had said one address and the appellant had said another.

20. The sponsor went on to say, with respect to the questions and answers in paragraphs 61, 62, 63, 64, 65 and 68 of the interview that she misunderstood the entire questions.

21. She gave an explanation for the fact that neither were wearing a ring on the day of interview because the appellant needed to get one for her as a replacement as the other one was lost and it was not fitting properly.

22. That does not of course explain why the appellant was not wearing his ring. He seeks to give some explanation in paragraph 25 of his statement that he was thinking the interviewing officer was talking about his ring and his answer was that the ring was at home as he was not wearing it on the day of the interview. It still begs the question as to why he was not wearing it at the interview.

23. Similarly in relation to presents he indicates in his statement that his wife received presents from his relatives while he did not receive personal gifts of his own as it was a small wedding. Why he should not receive any gifts on his wedding is perhaps a matter that is far from clear.

24. Essentially the two statements seek to confirm that inaccuracies were stated. Both sponsor and appellant fail to deal essentially with why the inaccuracies came to arise in the first place. Essentially time and time again it is repeated that which was addressed before the Immigration Judge, namely that they were confused and that there were contradictions because they were tired.

25. The Judge heard the evidence from both the appellant and from his wife and was therefore in the best position to judge the nature of that evidence and its credibility.

26. I do not find that the statements, even if they had been read would have made any material difference to the outcome of the hearing by the Judge. They gave little by way of explanation for the errors which were significant errors in the context of the claimed relationship.

27. I find that the Judge took all relevant matters into account in coming to the conclusions which he did. I do not find that there is any unfairness in the procedure such as to constitute an error of law.

28. In the circumstances therefore the appellant's appeal in the Upper Tribunal is dismissed. The decision of the First-tier Tribunal Judge shall stand, namely that the appeal of the appellant in respect of the 2006 Regulations is dismissed as is that in relation to Article 8 of the ECHR.

Signed Date

Upper Tribunal Judge King TD