



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

Appeal Number: EA/04634/2018

THE IMMIGRATION ACTS

**Heard at Field House
On 12th July 2019**

**Decision & Reasons Promulgated
On 25th July 2019**

Before

UPPER TRIBUNAL JUDGE FRANCES

Between

**YUMAN AZAM
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M Iqbal, Direct Access

For the Respondent: Mr I Jarvis, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant appeals against the decision of First-tier Tribunal Judge Abebrese promulgated on 1 March 2019 dismissing his appeal against the refusal of a residence card under the Immigration (EEA) Regulations 2016.
2. Permission to appeal was granted by First-tier Tribunal Judge Clive Lane on 10 June 2019 on the following grounds: "It is arguable that the judge at [22] has misunderstood the relevance of the previous decision of Judge Kekic and the conclusions expressed in the paragraph are not supported by any or any sufficient reasoning. All the grounds may be argued."

3. The Appellant married the Sponsor, an EEA national, in 2004 and was issued with a residence card in 2005. On 20 December 2010 his application for a permanent residence card was refused on the basis that his marriage was one of convenience because Home Office records showed that on 22 September 2009 the Appellant's Sponsor had married a Ghanaian national. The Appellant's appeal against the refusal of a permanent residence card was allowed by the First-tier Tribunal and the Respondent appealed. Upper Tribunal Judge Kekic found that there was an error of law and reheard the appeal. She found that there was a marriage of convenience and dismissed the Appellant's appeal on 11 April 2012. The Appellant challenged this decision, but permission was refused by the Court of Appeal in 2012. Accordingly, there is an extant finding that the Appellant was party to a marriage of convenience.
4. On 25 June 2015 the Appellant submitted an application for a residence card on the basis of a retained right of residence. The application was refused because the marriage was found to be one of convenience and the Appellant had failed to submit a decree absolute. The Appellant's appeal was dismissed by Upper Tribunal Judge James on 24 February 2017. The Appellant did not appeal, but made a further application, the subject of this appeal, submitting a decree absolute. This application was refused on the basis that the Appellant was party to a marriage of convenience.
5. The refusal letter of 18 June 2018 states as follows:

"It is noted that you married your Sponsor in 2004 and have previously been issued with a residence card in 2005. However, it is also noted that on 16/05/11 your application for permanent residence dated 20/12/10 was refused under Regulation 2, as a marriage of convenience.

Departmental records show that on 22/09/09 your former spouse Sonia Cristina Furtado Monteiro married Ghanaian national Frederick Owusu-Ansah in a customary marriage. Furthermore, on 17/10/09 Sonia Cristina Furtado Monteiro submitted an application for a residence card for her spouse Frederick Owusu-Ansah.

...

On 25/06/15 you submitted an application for a retained residence card, this application was refused with regard to the fact that your marriage was found to be one of convenience by an Immigration Judge. As your marriage was not accepted your application was not considered under Regulation 10 of the EEA Regulations 2016.

You have now submitted this application, it is noted that you have submitted a decree absolute dated 18/11/15, however, in order for you to be considered as the former spouse of an EEA national you will need to document that the marriage to your former spouse was genuine. Your marriage has been found by this department and an Immigration Judge to be one of convenience, undertaken to give you

an immigration advantage. Therefore, your application is refused in accordance with the EEA Regulations 2016.

In your appeal determination the Immigration Judge stated:

- '13. Upon reviewing the UTT Judge's decision she notes the inconsistencies and contradictions in the written and oral evidence of all witnesses in material matters, such as whether the Sponsor's two children resided with the couple or not, reasons for living apart or indeed whether they have lived apart or not and when. The judge deals in detail with Ms Furtado's pregnancy to another man during the marriage, the absence of evidence by the Appellant of his interactions with the two children of Ms Furtado or indeed the role of the biological fathers of the children, as well as the fact that Ms Furtado appeared to live apart from the Appellant directly after the wedding took place and further application for a residence card for another man claiming to be her husband from her address and whereby these two relationships overlapped in time, and which are distinct from the relationships which led to the pregnancy during the claimed marriage to the Appellant.
21. Upon revisiting the reasons for refusal set down in this refusal by the Respondent, although the Appellant submits his decree absolute dated 18/11/15 regarding his divorce from Ms Furtado, the point remains that this was a marriage of convenience from the very beginning. Therefore the marriage itself cannot be used as a springboard upon which he can then seek to obtain permanent residence in the UK after divorce by way of retained rights of residence, when the foundation of his claim is based on a fraudulent claim i.e. the marriage entered into was a genuine marriage, when it was not.'

Furthermore, even if your marriage had been accepted you would be expected to be able to submit valid I.D. in your sponsor name, or evidence that you had exhausted all avenues in order to obtain the relevant document. You have failed to do so."

Submissions

6. Mr Iqbal submitted that there was an error in the decision of Judge Kekic because there was insufficient evidence before her to conclude that the marriage was entered into with the intention of circumventing immigration law notwithstanding her negative credibility findings. The Appellant had been refused a permanent residence card on the basis of what happened in 2009, namely that his Sponsor had allegedly married a Ghanaian citizen. The Respondent had based the decision on an inference that the Respondent was not entitled to make. There was no evidence before Judge Kekic as to the intention of the parties when they entered into the marriage.
7. Mr Iqbal accepted that there was no appeal against the decision of Judge James where she found that there was no error of law in Judge Kekic's decision in relation to the application of Rosa [2016] EWCA Civ 14.

However, on the appeal before Judge Abebrese there was further evidence in order to support the Appellant's case, namely that of the Sponsor and two witnesses, and the judge failed to give reasons why he did not believe the evidence of those witnesses. There was no finding in Judge Kekic's decision that the Respondent had shown the marriage was one of convenience. It was argued at [19] and [20] before Judge Abebrese that Judge Kekic had failed to properly apply the decision of Rosa. Now there was further evidence upon which a different conclusion could have been reached. Therefore, regardless of all the negative credibility findings, which only proved the marriage could not have subsisted from 2009 onwards, it could not be said by inference that the parties intended a marriage of convenience. Judge Abebrese rejected the further evidence but gave no reasons for doing so. He merely relied on the decision of Judge Kekic and gave no reasons for rejecting the evidence before him.

8. Mr Jarvis submitted that the issue of a marriage of convenience had been decided against the Appellant on two occasions. Judge Kekic did consider the predominant purpose of the marriage at the point it was contracted. She dealt with the proxy marriage and the Respondent's burden of proving the marriage was one of convenience. The judge assessed this issue looking at the totality of the evidence. It was no defence to say that the matters were not put to the Appellant. Judge Kekic considered the entire period of the Appellant's marriage. She looked backwards from 2009 at [49] onwards and identified material discrepancies. She gave adequate reasons for rejecting the Appellant's evidence. She directed herself on the burden of proof at [40]. Judge Kekic had to listen to multiple witnesses giving extremely discrepant evidence and her findings were clear and cogent. Judge James subsequently found that the Judge Kekic had properly applied Rosa.
9. Judge Abebrese correctly applied Devaseelan and lawfully approached the assessment of a marriage of convenience. He understood the impact of Judge James' decision. There were adequate reasons for rejecting the evidence of the witnesses. The witnesses before Judge Kekic were different and they were recounting events closer to the time. It was going to take something fairly remarkable to overturn the substantial negative credibility findings made by Judge Kekic. The witnesses' evidence before Judge Abebrese did not really add anything. There was no material error of law at [22] because, although the finding was brief, there were sufficient reasons in the context of the appeal. The further evidence was not sufficient to displace the negative credibility findings from before.
10. Mr Iqbal relied on [44] of the Appellant's witness statement and submitted that Upper Tribunal Judge Kekic did not deal with this period of time and therefore there was a gap in the judge's findings in relation to evidence of the marriage prior to 2006. Therefore, there was insufficient evidence to demonstrate that the intention of the parties was to enter into a marriage of convenience.

Conclusions and reasons

11. Upper Tribunal Judge Kekic accepted that there was a legal marriage between the Appellant and Sponsor and that the parties did not have to live together for the marriage to be genuine. She accepted that the marriage did not have to be subsisting as long as it had been genuine and not a marriage of convenience. In reaching her findings the judge considered the oral evidence of all four witnesses, the documentary evidence and the submissions made.

12. The judge then set out the matters going to the claimed relationship and detracting from it. At [48] to [64] Judge Kekic gave reasons for why she found the Appellant, the Sponsor and the witnesses were not credible. At [65] she concluded:

“...My main difficulties and concerns with the evidence are set out above. Ms Asanovic submitted that the documents showed that the couple had a genuine marriage and that no-one would attend a hearing of an appeal and lie repeatedly. I can only say that, regrettably, people will and do go to great lengths to stay in the UK, including lying at hearings, and for the reasons I have set out I find that the applicant is one of those people. I conclude that he and the Sponsor have not been reliable or honest witnesses and have failed to show that their marriage is genuine and not one of convenience”.

13. First-tier Tribunal Judge James made the following relevant finding:

“16. I am therefore not persuaded that the UTT Judge only dealt with whether or not the marriage was subsisting, as a close reading of her decision proves otherwise and reading the decision as a whole addresses matters as at the date of the marriage, as well as after the marriage, whereby the actions of the parties informed their intentions as at the time of the marriage”.

14. The evidence before Judge Abebrese did not undermine the previous findings of Upper Tribunal Judge Kekic or First-tier Tribunal Judge James. Judge Abebrese considered all the evidence and concluded that it was not capable of doing so at [22]:

“I am of the view that in light of the findings referred to above and also taking into consideration the evidence that was before me I do not accept the evidence of the appellant, sponsor and evidence of Ms Illahi and Mr Jehangir as credible in relation to the genuineness of the relationship and that the relationship is not one of convenience because the Appellant in the hearing before the Tribunal provided evidence which was inconsistent and unreliable and they have not provided evidence evidence (sic) in the hearing before me to render me to alter those findings I have referred to the relevant paragraphs above. I do not accept the submissions of the Appellant representative on the claimed deficiency of the evidence in the hearing before IJ Kekic. I also find that it is not the case that the decision does not take into consideration the intention of the parties and Mr Iqbal did not direct me to any parts of the decision to support his submissions.”

15. It is apparent from the decision of Judge Abebrese that he found the intention of the parties was addressed by Judge Kekic. This was the undisturbed finding of First-tier Tribunal Judge James. The Appellant did not appeal this decision and Judge Abebrese saw no reason to depart from it. The new evidence amounted to evidence that the Appellant had married his spouse and they had lived together in Walthamstow at the time of the marriage. Taken at its highest, this was insufficient to displace the credibility findings of Judge Kekic or to demonstrate, on the totality of the evidence, that the Respondent had failed to show the marriage was one of convenience.
16. I am not persuaded by Mr Iqbal's argument that there was any gap in the consideration of evidence in Judge Kekic's decision. It is a comprehensive decision which makes numerous negative credibility findings. The Appellant and Sponsor have been found not to be credible witnesses by Judge Kekic after hearing oral evidence. Judge Abebrese found they were not credible at the hearing before him. His conclusion that the evidence he heard was not sufficient to displace those earlier credibility findings were adequate reasons for finding that the marriage was one of convenience and dismissing the appeal.
17. I accept that Judge Abebrese could have explained himself better but there was no error of law in his decision. He engaged with the submissions of Mr Iqbal, which have now been made on two separate occasions and rejected. It is not possible to rely on a marriage of convenience in respect of a retained right of residence. Given the strong negative credibility findings by Upper Tribunal Judge Kekic there would need to be very strong evidence to the contrary to displace those findings. It was not before First-tier Tribunal Judge James and it was not before First-tier Tribunal Judge Abebrese.
18. There was no error of law in the decision of First-tier Tribunal Judge Abebrese promulgated on 1 March 2019 and I dismiss the Appellant's appeal.

Notice of decision

Appeal dismissed

No anonymity direction is made.

J Frances

Signed

Date: 22 July 2019

Upper Tribunal Judge Frances

TO THE RESPONDENT
FEE AWARD

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

J Frances

Signed

Date: 22 July 2019

Upper Tribunal Judge Frances