IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-001825
First Tier No: EU/51513/2023
LE/01506/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 8 August 2024

Before

UPPER TRIBUNAL JUDGE LANE
DEPUTY UPPER TRIBUNAL JUDGE CHANA

Between

OMETERE ATTAH
(NO ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Not present or represented
For the Respondent: Mr E Tufan, Senior Presenting Officer

Heard at Field House on 13 June 2024

DECISION AND REASONS

1. This was an appeal to the First-tier Tribunal under the Immigration (Citizens' Rights Appeals) (EU Exit) Regulations 2020 (“the Appeals Regulations”)against a decision of the respondent on 27 February 2023 to refuse to issue her application for a family permit pursuant to Appendix EU settlement scheme.

2. The respondent refused the application on 27 February 2023 on the grounds that the appellant did not meet the requirements of rule EU11 of Appendix EU to the Immigration Rules and in relation to Regulation 2

and 20B of the Immigration (EEA) Regulations 2016 on the grounds that the Appellant's marriage is one of convenience. The Respondent alleged that there were reasonable grounds to suspect that appellant's marriage was one of convenience because the appellant and her husband failed to attend a marriage interview on two occasions.

3. The appellant did not attend the hearing. On 13 June 2024, the Tribunal received an email from his representatives stating that they had ceased acting for the appellant. However at the time of service to the solicitors, they were still on record as acting for the appellant and therefore we find that service on the representatives constitutes effective service of the notice of hearing. We are satisfied from the court file that the appellant was given due notice of the time, date and venue of the hearing but he did not attend nor has anybody attended on her behalf, nor have we been given any explanation for her failure to attend.

4. In all the circumstances of this case and given the specific directions made, we are satisfied that it is in the interests of justice to proceed to determine this appeal in the appellant's absence.

5. The appeal came before the First-tier Tribunal Judge S Khan who dismissed the appellant's appeal. The appellant was represented by Mr S Chigbo, Legal Representative from Moorehouse Solicitors. The Judge found that the two key documents the appellant relied on to prove her marriage, contained mistakes but she has not made any efforts to rectify them and obtain explanations from the respective bodies.

6. The Judge stated that the appellant's evidence was that her previous marriage ended on the 18 January 2022. However the divorce document stated that it ended on 18 February 2020. The appellant explained there is a mistake on the date of the divorce document and that it was a "a slip of the pen". The Judge found that this mistake has not been corrected and that there was no evidence from the Court amending the date of the divorce.

7. The Judge did not accept the appellant's evidence for her failure to attend the two marriage interviews. The appellant claimed that she contacted the respondent to confirm her attendance to the second interview but there is no record of it because she used a pay-as-you-go number and this number was no longer working. She claimed that she did not attend the first appointment because she was unwell as she had a miscarriage and was unwell. She stated that her husband had not attending the hearing today because her marriage was in crisis which occurred last month. She said that he sometimes comes home and sometimes he does not and that he does not answer her telephone calls. She said that there are no photographs of them together because she lost her phone. She also claimed that the marriage certificate

indicated that she was single and she explained that this was also a mistake.

8. The Judge found that the appellant's marriage on 10 February 2020 to the sponsor was not valid because the appellant at the time of her second marriage, was married to her first husband. The Judge concluded that, in light of his decision on the validity of marriage, it is not necessary to decide whether the marriage was one of convenience.

9. The appellant sought permission to appeal on the grounds that the Judge had erred in a number of respects. First, Judge Khan should have considered Annex 1 of Appendix EU with the guidance in *Papajorgji (EEA spouse – marriage of convenience) Greece [2012] UKUT 00038 (IAC)*. The Judge erred in law by failing to find that the respondent had proved that the marriage was one of convenience as required under Annex 1 of appendix EU and the case law. The Judge erred in law with respect to the way he determined that the appellant's marriage was not valid. The Upper Tribunal is directed to the guidance in *Papajorgji* as to how a marriage of convenience issues are to be tackled by any factfinder. The only material issue in the appeal was whether the marriage relied upon was a sham. However, the First-tier Tribunal made findings to the effect that the marriage was not valid. The determination highlights the dates the interview notices were sent out but fails to consider the appellant's good reasons for non attendance and the fact that the respondent's decision was based entirely on a failure to attend a marriage interview which is contrary to paragraph A2.2 (5) of Appendix EU and thereby wrongly concluded that the marriage was one of convenience.

10. Permission was granted by First-tier Tribunal Judge Dainty on 25 April 2024 in the following terms;

> "The grounds aver that the Judge should have considered the matter by reference to Papajorgji (EEA spouse – marriage of convenience) Greece[2012] UKUT 00038 (IAC) and the guidance therein as to how to how to consider marriage of convenience allegations. Further it is said that the decision runs counter to App EU A2.2 (5) which provides that the decision must not be based solely on the basis that the Applicant failed on at least two occasions to comply with an invitation to be interviewed".
>
> There is an arguable error of law in the Judge not directing herself to either Papajorgji (EEA spouse - marriage of convenience) or the factors therein in deciding whether there were factors that gave rise to suspicion such as to require the Appellant to prove that the marriage was not one of convenience. It is arguable that, regardless of whether it may appear that those factors were present in for example the mistaken dates in the documents, in failing to give reasons which engaged with this test there is an error of law and an

> error that arguably was material. Based on the wording of the second ground relating to A2.2(5) it is not clear how it is said that the Judge made an error of law in that regard and so that element of the grounds is not arguable".

11. At the outset, we note that in this case the decision of the First-tier Tribunal is arguably unclear as to the issue that the Judge had to decide, which was whether the appellant's marriage is one of convenience. The grounds of appeal state that the only issue in the appeal was whether the marriage relied upon was a sham. The Judge made a decision on an issue not raised by the respondent, that the marriage was not valid. This was that appellant was already married at the time that she married her sponsor. It is further submitted by the appellant that the failure of the Judge to follow the guidance in *Papajorgji* was a material error.

12. The grounds of appeal invited us to consider the appellant's appeal within the guidance of *Papajorgji* which we now do. We had no difficulty in discerning what the Judge had decided or why, even though he made no decision regarding the marriage of convenience or refer to the case of *Papajorgji.* These defects would, ordinarily, militate in favour of a finding that the decision involve the making of an error of law. But, for the reasons to which we now give, the appeal was bound to fail. It is therefore necessary to set out in detail why it is that the appellant could not succeed.

13. Under Appendix EU (FP) the appellant could only obtain a family permit if she was the "family member of a relevant EEA citizen" as defined within Appendix EU(FP). The respondent raised the their suspicion that the appellant's marriage was one of convenience on the evidence. The grounds of appeal state that the respondent's decision was based entirely on a failure by the appellant to attend two marriage interviews. We find that there was sufficient evidence that the respondent had grounds to suspect that hers was a marriage of convenience.

14. The evidence indicates that the appellant failed to attend to attend two marriage interviews. The Judge gave cogent reasons for why he did not accept the appellant's explanation for her failure to attend. Her explanation for why she did not attend the first appointment was that she was unwell and had suffered a miscarriage but no evidence was provided to corroborate this claim. The Judge also found that there was no record of the appellant contacting the respondent to explain why she could not attend her second interview. The Judge noted that her sponsor did not attend the hearing and her explanation was that her marriage was in crisis. No photographs of the appellant and her sponsor together had been adduced in evidence. We find that the Judge therefore was entitled to conclude that there were lacunae in the evidence which cast doubt on the reliability of that evidence.

15. The judge found that there were multiple inconsistencies in the appellant's evidence. The appellant does not disagree that there are inconsistencies but said that they are all genuine mistakes. The marriage certificate indicated that she was single although she had been married before, which the appellant said was a mistake. The Judge found that the two key documents the appellant relied on to prove her marriage contained mistakes but she has not made any efforts to rectify them and obtain explanations from the respective authorities for serious errors in what are claimed to be official documents.

16. Ultimately, we find that the Judge was entitled to find that the appellant was not a credible witness and, in the circumstances, that the appellant had not discharged her burden of proof. We find that the judge correctly applied the principles contained in *Rosa [2016] EWCA Civ* 14.

17. Accordingly, given that the appellant could not, on any view of the evidence, have lawfully succeeded in the appeal to the First-tier Tribunal, we find that the decision did not involve the making of any error of law capable of affecting the outcome of the appeal. We therefore uphold the First-tier Tribunal's decision and dismiss the appeal.

Notice of Decision

The appeal is dismissed.

Signed
Sureta Chana

Date: 26 June 2024

Deputy Judge of the Upper Tribunal