**Upper Tribunal**
**(Immigration and Asylum Chamber)** **Appeal Number: EA/05918/2016**

**THE IMMIGRATION ACTS**

| **Heard at Field House** | **Decision & Reasons Promulgated** |
|---|---|
| **On 9th April 2018** | **On 3rd May 2018** |

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE SAINI**

**Between**

**MD MASUM BILLAH**
(ANONYMITY DIRECTION NOT MADE)

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mr S Hossein, Legal Representative; Reymond Solicitors
For the Respondent: Mr C Avery, Senior Presenting Officer

**DECISION AND REASONS**

1. The Appellant appeals against the decision of First-tier Tribunal Judge Hendry dismissing his appeal against the decision of the Secretary of State refusing to grant him a residence card under Regulation 17 of the Immigration (EEA) Regulations 2006. The decision of Judge Hendry was promulgated on 2nd November 2017. Permission to appeal was granted by First-tier Tribunal Judge Robertson, which in turn was approved by Upper Tribunal Judge Perkins. The reasons given for granting permission by Judge Robertson may be summarised as follows:

> "It is arguable as submitted in the ground that the judge has arguably erred in law in overlooking the evidence referred to in Ground 2 when he made his findings of fact. It is not clear at this stage whether this would make a material difference to the outcome of the appeal and permission to appeal is therefore granted.
>
> There is less arguable merit in the other grounds (as to Ground 1, the judge heard from and recorded the evidence of all the witnesses at paragraph 45 to 105). The evidence at paragraphs 75 to 105 is adequately summarised at paragraph 152 as not significant or helpful because it was general in nature, and it was open to him to so find. As to Ground 3 the fact that the Appellant and the Sponsor were said to live in a bedsit would not prevent people from visiting them. However, as permission is granted on Ground 1 the Appellant is not precluded from relying on the rest of the grounds."

2. I was not provided with a Rule 24 response from the Respondent as one was not prepared for the purposes of this appeal. However, the Respondent indicated that the appeal was resisted.

**Error of Law**

3. At the close of the hearing I reserved my decision, which I shall now give. I do not find that there was an error of law such that the decision should be set aside. My reasons for so finding are as follows.

4. In relation to Ground 1, the complaint in summary is that the judge failed to give sufficient reasons for not accepting the evidence from the various witnesses she heard from, upon which she summarises her conclusion to that evidence at paragraph 152 of the decision wherein she states: "I heard from various witnesses, but most of their evidence was insignificant and unhelpful, confirming only that they had seen the Appellant and Sponsor together at arranged events, some occurring after the previous hearing." With respect to Ground 1 as pleaded, I do not find that the judge's summarisation at paragraph 152 is inadequate for the reason that the judge did find that the evidence from the witnesses was, in her words – 'insignificant' and 'unhelpful' in that the evidence only confirmed that they had seen the Appellant and Sponsor at events on several occasions, but did not contain any further detail or evidence that would go to establishing the marriage was a genuine one by reference to details such as seeing the Appellant and Sponsor in anything but prearranged social events. The judge characterises this as the Appellant and Sponsor not going to various witnesses' residences for direct social events or inviting others to socialise with them directly, but rather only being seen together at events, which circumstantial evidence was insufficient to discharge the burden of proof that the marriage was not one of convenience, once the burden had passed to the Appellant after the Secretary of State had discharged the initial burden that fell upon her.

5. I further observe that it is true to say that the witness statements are unhelpful in that they do not say much at all about the personal

relationship between the Appellant and Sponsor, nor do they make any nuanced observations about the couple and whether they are in a genuine relationship or not in the measured opinion of the deponent, which would have been helpful to the Tribunal as well as to the Appellant's appeal in rebuttal. The statements seem to merely recite the frequency of each deponent seeing the Appellant and Sponsor at events, and the witness statements are fairly similar in their content and ultimately did not substantiate the genuineness of the Appellant's marriage to the Sponsor. Thus the judge's observation that the various witnesses saw the Appellant and Sponsor together at events accurately reflects the quality and nature of the evidence that she heard.

6. Turning to Ground 2, which Mr Hossein accepted was the strongest ground of the four drafted, I do find that the judge had regard to the evidence complained of in respect of the bank statements and financial documents, which are mentioned at paragraph 144 of the decision, and in respect of the evidence from the landlord/landlady, which is mentioned at paragraphs 142 to 143 of the judge's decision. As to the electoral register, I accept that the judge did not consider the evidence that the Appellant and Sponsor were reinstated on the electoral register within months of being removed. However, I cannot see that this would have had a material impact upon the judge's other robust findings on the genuineness of the marriage. As to the judge's finding at paragraph 151 of the decision that the photographs did not all show the Sponsor wearing a hijab at family events but did show her wearing it at other times, I do not see this as being an explicit criticism of the Sponsor's evidence but moreover a summary of the content of the photos which were shown to the judge. The judge has not specifically criticised the Sponsor or Appellant in relation to the frequency or consistency of the Sponsor wearing a hijab and as such there does not seem to me to be any finding or observation that was not open to the judge to make. Finally, looking at paragraph 143 of the decision and the appropriateness or otherwise of the tenancy agreements and flat rentals, whilst pages 63 to 65 of the Appellant's bundle do confirm that the Appellant and Sponsor were lodgers at the property and that the landlord and landlady did not have access to official lodger agreements but used a tenancy agreement instead, again, I cannot see how the format of the agreement would have had a material difference to the outcome of the appeal given the judge's other findings.

7. Turning to Ground 3 and the judge's finding at paragraph 154 of the decision that the photos showed careful posing on special occasions, again, the repeated argument that the Appellant and Sponsor could not be visited if they were living in what is in effect a bedsit would not prevent people from visiting them as they did live in a shared house and this argument does not demonstrate in and of itself that the finding was not one that was open to the judge to make, nor was the judge inappropriate in referring to the evidence from the earlier hearing at paragraph 142 of the decision when considering the letter of the landlady and finding it unpersuasive.

8. In relation to Ground 4, this ground at first blush may have held some merit in criticising paragraph 157 of the decision. However, as canvassed with Mr Hossein, paragraphs 155 to 157 should be read as a whole, which collectively make clear that the judge was aware of the leading Upper Tribunal authority of *Papajorgji (EEA spouse – marriage of convenience) Greece* [2012] UKUT 00038 (IAC) and mentioned that the refusal letter raised questions about whether the marriage was genuine and that there were reasons to suspect this was a marriage of convenience in accordance with *Papajorgji*, which shifted the burden from the Respondent to the Appellant to provide a response. I further observe that even if this paragraph was infelicitously framed, any error is not material, as this is a *Devaseelan* matter where there has been a previous outcome from the First-tier Tribunal that has fallen against the Appellant which raised the same issue, and therefore there was sufficient material in that previous outcome to justify the judge's observation at paragraphs 155 to 157 that the burden of proof lay with the Appellant in the appeal as the previous findings were sufficient to discharge the initial burden of proof upon the Respondent to show a reasonable suspicion in doubting the marriage.

9. Therefore, in light of the above the decision of the First-tier Tribunal does not reveal an error of law such that the decision should be set aside.

**Notice of Decision**

10. The appeal to the Upper Tribunal is dismissed.

11. The decision of the First-tier Tribunal is hereby affirmed.

12. No anonymity direction is made.

Signed Date 02 May 2018

Deputy Upper Tribunal Judge Saini