



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Numbers: EA/06104/2016  
EA/09578/2016

THE IMMIGRATION ACTS

Heard at Field House  
On 4<sup>th</sup> May 2018

Decision & Reasons Promulgated  
On 30<sup>th</sup> May 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE SAINI

Between

MISS DEBORAH OLUWARANTI JOHN  
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr J Babarinde, Legal Representative  
For the Respondent: Mr T Wilding, Senior Presenting Officer

DECISION AND REASONS

1. The Appellant appeals against the decision of First-tier Tribunal Judge Morron dismissing her appeal against the Secretary of State's decision to refuse to grant entry on the basis of her application for an EEA family permit to join her spouse, Mr Michael Johnson Olugboyega in the UK.
2. The decision of Judge Morron was promulgated on 1<sup>st</sup> August 2017. The Appellant was granted permission to appeal by First-tier Tribunal Judge Hollingworth. The grounds upon which permission was granted stated as follows:

“It is arguable that the Judge has set out an insufficient analysis of the point at which the evidential burden switched and the point at which the Appellant failed to discharge the evidential burden which had so switched in relation to that portion of the evidence, if any on the analysis of the Judge, demonstrating consistency and any other evidence in favour of the Appellant appertaining to the genuineness of the marriage. The approach taken by the Judge having referred to the burden being on the Respondent to prove the case on the balance of probabilities as reflected at paragraph 30 of the decision is that having weighed up all the evidence the Judge found that there were significant gaps and inconsistencies and that the Respondent had proved that this was a marriage of convenience. The credibility analysis set out by the Judge at paragraph 29 of the decision has referred to little detail having been added to what had been provided with the two applications. The totality of the Judge’s analysis of credibility set out at paragraph 29 of the decision refers exclusively to inconsistency and to paucity of evidence. It is arguable that in considering the discharge of a switched evidential burden the Judge’s analysis should have embraced features adduced in support of the Appellant’s case. It is arguable that the Judge has attached excessive weight to features of the case considered to suffer from paucity of evidence in contradistinction to the strength of the case as put forward by the Appellant on the Appellant’s argument as at the date of the application and thereafter. It is arguable that the Judge has attached insufficient weight to evidence of communication as indicated at paragraph 2 of the permission application and that the Judge has attached too much weight to conclusions drawn from arguable misinterpretation of the available evidence as submitted in the permission application.”

3. I was not provided with a Rule 24 response from the Respondent, however was addressed by her representative whom confirmed that the appeal was resisted.

#### **Error of Law**

4. At the close of submissions I indicated I would reserve my decision which I shall now give. I do not find that there is an error of law such that the decision should be set aside. My reasons for so finding are as follows.
5. Taking the Grounds of Appeal in turn the first issue flagged is that the burden of proof is upon the Respondent to show that a marriage is one of convenience and that the principles in *Papajorgji (EEA spouse – marriage of convenience) Greece* [2012] UKUT 00038 (IAC) have not been applied. I do not find that there is any merit in this ground as the judge has clearly considered that authority at paragraph 5 of the decision and has stated again at paragraph 26 that the burden of proof is upon the Respondent to prove their case on the balance of probabilities. It is only because of the number of issues raised by the Respondent which discharged that initial burden that the judge then turns to the Appellant’s and Sponsor’s evidence in reply from paragraph 27 onwards. With that in mind it is implicit that the judge found that there was a reasonable suspicion established by the Respondent in the two refusals that are the subject of this appeal.

6. The next issue raised was a challenge to the findings at paragraph 29 of the judge's decision and in essence Mr Babarinde submitted that the findings made by the judge in paragraph 29 did not show or demonstrate a marriage of convenience. With respect, that submission sounded more akin to a disagreement rather than an argument demonstrating that the decision was not open to the judge to make, and there is force in Mr Wilding's submission that the two refusals did show a number of reasons why a reasonable suspicion was generated. Consequently the judge's observation that the Appellant and Sponsor had added little detail to their evidence submitted with the applications is one that has, in my view, led the judge to justifiably find that the suspicion of a marriage of convenience had not been rebutted by the Appellant on the balance of probabilities. Mr Babarinde was keen to submit that there was no evidence that could be submitted such as WhatsApp records, however that submission is undermined by the fact that the Sponsor had been exercising treaty rights since May 2015 and therefore it was perfectly possible for any contact between that period and the dates of refusal to have been provided, for example, by means of electronic chat or email, but it seems that this period was not addressed and it may be that neither the Appellant nor her representatives have done so thus far.
7. The judge did note that there were e-mails between the Appellant and the Sponsor at paragraph 29 and noted that the e-mails produced were affectionate, but also noted that all of them referred to the visa applications and the evidence or information required for the applications, and as such the concerns as to the paucity of evidence of the relationship prior to May 2016 were valid and, I stress, not rebutted by the Appellant by virtue of the evidence put forward. I hasten to add that that does not mean that the Appellant could not produce such evidence in a fresh application to demonstrate that the suspicion that the marriage was one of convenience is in fact incorrect, but that evidence was not before the First-tier Tribunal and consequently I cannot see any error in the judge's conclusion which led him to find that the suspicion that the marriage was one of convenience had not been rebutted.
8. Regarding the further challenge that the judge had failed to consider the phone log, the judge did in fact note at paragraph 17 the evidence concerning the statement that the Sponsor kept in touch by telephone contact or video call and that they spoke to each other nearly every day, however I find that even if the judge were to consider the phone call log in the Appellant's bundle, that evidence would not necessarily assist the Appellant and Sponsor greatly in showing the marriage was not one of convenience. This is because the call logs simply showed that calls were made between the Appellant and Sponsor but did not show the content of the calls, and so the consistency of the calls could not answer the specific suspicions raised in the two refusals as to why the marriage was thought to be one of convenience. That would require different and discrete evidence to address this point. Therefore, in conclusion, whilst I note that the decision is extremely concise and robust, the Appellant has not demonstrated that the decision was not open to the First-tier Tribunal Judge to make based upon the evidence before him despite Mr Babarinde's passionate efforts.

9. In light of the above findings the decision and findings of the First-tier Tribunal are affirmed.

**Notice of Decision**

10. The appeal to the Upper Tribunal is dismissed. The First-tier Tribunal's decision shall stand.
11. No anonymity direction is made.

Signed

Date 04 May 2018

Deputy Upper Tribunal Judge Saini