



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

Appeal Number: EA/09255/2016

THE IMMIGRATION ACTS

**Heard at Field House
On 8 February 2019**

**Decision & Reasons Promulgated
On 6 March 2019**

Before

UPPER TRIBUNAL JUDGE ALLEN

Between

**ADJO GEORGETTE KOUAO
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr V Ogunbusola, Counsel, instructed by Chancery CS Solicitors (Citygate House)

For the Respondent: Mr T Melvin, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a national of the Cote d'Ivoire. She appealed to a Judge of the First-tier Tribunal against the Secretary of State's decision of 25 July 2016 to revoke her permanent residence card which was issued under the Immigration (EEA) Regulations 2006.
2. The appellant had previously been issued with a residence card as the spouse of Mr [M], a French national, and was subsequently granted a permanent residence card on 3 December 2015 for a ten year period. It was that card which was the subject of the decision under challenge.

3. The basis of the revocation was that there had been an investigation into French nationals being brought into the United Kingdom for the purpose of bogus proxy marriages and benefit fraud. There had been several criminal prosecutions and there had been found to be links to sham marriages and in particular customary marriages in Ghana and the Ivory Coast. There was evidence of a generic nature from the respondent. The appellant's ex-husband and sponsor had been identified as a person involved in the fraud and the appellant's name and date of birth were marked as being involved, on a spreadsheet annexed to a witness statement which the judge had before her. On the basis of this evidence the respondent was not satisfied that this was a genuine and subsisting marriage and found that it was a marriage of convenience and as a consequence revoked the appellant's residence card. In addition, the judge had witness statements from Philip Gibson who is a fraud investigator employed by the Department for Work and Pensions.
4. The judge noted the guidance in Agho [2015] EWCA Civ 1198, where it was confirmed that the burden of proving whether a marriage of convenience exists rests on the respondent. It was also said there that the burden was not discharged merely by showing "reasonable suspicion" but that in the usual way the evidential burden might shift to the applicant by proof of facts which justified the inference that the marriage was not genuine and the facts giving rise to the inference might include a failure to answer a request for documentary proof of the genuineness of the marriage where grounds of suspicion had been raised. That decision approved what had been said by the Upper Tribunal in Papajorgji [2012] UKUT 00038, and that decision was further approved by the Supreme Court in Sadovska [2017] UKSC 54.
5. The judge commented on the generic nature of the evidence produced by the respondent though she noted that it did specifically name the appellant's ex-wife as a person connected to a fraud or sham marriage. She correctly concluded that she first had to consider whether this evidence was sufficient to discharge the burden onto the appellant to show that this was not a sham marriage.
6. She derived support from the approach in TOEIC cases where the burden moves from the respondent to discharge the evidential burden to the appellant if the burden on the respondent has been discharged. The judge concluded that the witness statements and spreadsheets produced by the respondent were sufficient to discharge the initial burden and it was then for the appellant to establish on the balance of probabilities that she is in a genuine marriage.
7. The judge then went on to consider the guidance in respect of marriages of convenience in Papajorgji which involved the need to consider the totality of the evidence and decide whether it was more probable than not that it was a marriage of convenience.

8. The judge did not find the appellant to be a credible witness. She noted vagueness in her answers as to how and whether she had tried to contact her ex-husband after she found out about the allegations being made against him in 2016. She found inconsistencies in her evidence and also found vague the evidence of a Mr Sarbah, a friend who gave evidence. The judge found it surprising that there were only three photographs provided of two occasions involving her and her husband and noted inconsistency in her reasons given as to why she did not return at the end of her visit visa expiring.
9. The judge considered that as noted above the initial burden of proof had shifted, but commented that even if she was wrong about that, the credibility findings she had made were of sufficient gravity that she would have found it had been established that the marriage was a marriage of convenience. She accepted that the appellant's ex-husband had not been charged but considered that that was because he had not been traced and the authorities had therefore had not been able to charge him. The fact that some of the perpetrators were brought to the United Kingdom for the purpose of obtaining fraudulent documents and marrying meant that they would have had a physical presence in the United Kingdom and therefore the fact that the appellant could establish that her ex-husband was in the United Kingdom did not go to undermine the case against her as was argued on her behalf. As regards the documents put in to show that her ex-husband was resident in the United Kingdom, the judge scrutinised these at paragraph 20 and concluded that they did not make that out. The judge found that the appellant had failed to establish this was a genuine marriage and looking at the evidence in the round as she was directed to do by Papajorgji was satisfied that it was a marriage of convenience.
10. She went on to say that if the burden had not shifted and remained on the appellant she found the burden had been satisfied based on her findings that there was no credible supporting evidence of the relationship, very limited photographic evidence and no originals available, and inconsistent evidence from the appellant and her witness. Taking this together with the evidence of Miss Price and Mr Gibson the judge found the respondent had discharged the burden of proof on the balance of probabilities.
11. The appellant sought permission to appeal this decision on the basis that the judge had erred as to the burden of proof, basing her decision on generic evidence and arguing among other things that the appellant's ex-husband had not been one of the people who had been prosecuted as he could have been despite not being located. The judge, it was argued, had failed to take proper account of the documentary evidence before her and, it was argued, had made an error of law.

12. Permission to appeal was granted by a Judge of the Upper Tribunal on the basis that it was arguable in particular that the judge had reversed the burden of proof.
13. I am grateful to Mr Ogunbusola and Mr Melvin for their helpful submissions. It is clear from the guidance set out in Papajorgji and as approved in Agho, again in Rosa [2016] EWCA Civ 14 and in Sadovska, that there is an evidential burden on the respondent in circumstances where there are factors which support suspicions for believing the marriage to be one of convenience. As was said in Papajorgji, if there is no evidence that could support a conclusion that the marriage is one of convenience, the appellant does not have to deal with the issue. But once the issue is raised by evidence capable of pointing to a conclusion that the marriage is one of convenience, it is for the appellant to show that his marriage is not one of convenience.
14. In my view it was fully and properly open to the judge to conclude that in light of the generic evidence, and some of it going beyond the generic, the evidential burden was discharged by the respondent and the burden then switched to the appellant. It is clear, for example, from Mr Gibson's report, that evidence gathered during the investigation indicated that Mr [M] was brought to the United Kingdom for the purpose of immigration fraud and was never resident in the United Kingdom and could not therefore exercise treaty rights. It was noted that the address recorded for Mr [M] was used significantly during the period of the fraud and could be linked directly to being controlled by a named person. On 24 occasions that address was provided in circumstances where 22 of the French nationals subsequently entered into marriages with non-EEA nationals and sponsored immigration applications. He concluded that as lead officer in the investigation the marriage between the appellant and Mr [M] was a sham and that any subsequent immigration applications were fraudulent and contained false information to deceive the UK authorities and obtain immigration status by deception.
15. The judge then properly went on, as she noted at paragraph 10 of her decision, to conclude that the witness statements and spreadsheets produced by the respondent were sufficient to discharge the initial burden and it was then for the appellant to establish on the balance of probabilities that she was in a genuine marriage.
16. The judge considered a list of indicative criteria suggesting possible intention to abuse the rights conferred by the Directive for the sole purpose of contravening national immigration laws, as listed in Papajorgji. It was necessary to consider the totality of the evidence. The judge found the appellant to lack credibility, noting considerable vagueness in her answers and inconsistencies, for example having initially when asked if she had tried to contact her ex-husband asked why she should contact him they were divorced and then saying she had tried to get in touch with him shortly before the divorce. Also, although she claimed not to know where

he was and not to have been in touch with him since the start of 2014 and unable to locate him before the divorce in May 2014, she was nevertheless able to produce his P60 for the year ending April 2014. The judge found it to lack credibility that she would have not invited her siblings to the wedding as they did not live in the United Kingdom and it was expensive to come and yet she invited her husband's siblings who also did not live in the United Kingdom but they did not want to come as they did not support the marriage. The witness Mr Sarbah had attended the proxy marriage celebration but said he did not know whether the building was a restaurant or a hall and his evidence was vague. He could not remember when in 2009 he met the appellant and could not remember when he met her husband and had only visited her at her home twice. The judge also was concerned as to the small number of photographs produced of the appellant and her ex-husband. She was also inconsistent when asked why she did not return at the end of her visit visa expiring. She had arrived in October 2004 on a valid visit visa for six months which would have expired in around April 2005 and when asked why she did not return then she said she was going to marry her (now) ex-husband and so there did not seem any point. However, when asked when they made the decision to marry she said it was a year after meeting and therefore in about December 2005, about seven months after her visa expired.

17. The judge did consider the documentary evidence. She properly noted that even if it were shown that the ex-husband had been in the United Kingdom that would not show he was not involved in criminal matters as perpetrators were brought to the United Kingdom for the purpose of obtaining fraudulent documents and therefore he would have had to have been in the United Kingdom at some point. It was argued that payslips were paid into the husband's bank account as evidence of authenticity, it appeared to the judge that not one appeared to have been paid in. One was identified by Counsel, in 2011, but later payments in 2014 did not appear on the corresponding bank statement and the same was true with regard to a payslip at page 110 of the bundle. It appeared to the judge, having cross-checked many of the documents, that some payments did cross-refer but not all of them and she was therefore not satisfied she could attach any weight to the documents as evidence that the ex-husband was resident in the United Kingdom.
18. The judge brought all these matters together and concluded that the burden of proof on the appellant had not been discharged.
19. In my view this was a finding that was fully open to her. She correctly applied the guidance on the burden as set out in Papajorgji and approved in subsequent decisions, and she gave careful consideration to the evidence and it was fully open to her to find that the burden on the appellant had not been discharged and therefore to dismiss the appeal. No error of law in her decision has been identified and as a consequence her decision dismissing the appeal is maintained.

20. No anonymity direction is made.

A handwritten signature in black ink, consisting of a large, stylized initial 'A' followed by several loops and a final flourish.

Signed
Upper Tribunal Judge Allen

Date 21 February 2019