Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: EA/02875/2020 (V)

THE IMMIGRATION ACTS

Heard by a remote hearing
On 23 July 2021

Decision & Reasons Promulgated
On 15 September 2021

Before

UPPER TRIBUNAL JUDGE REEDS

Between

JESSICA AMADIN USIOBAIFO
(ANONYMITY DIRECTION NOT MADE)

Appellant

AND

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr. T. Emezie, Solicitor acting on behalf of the appellant.
For the Respondent: Mr Diwnycz, Senior Presenting Officer

DECISION AND REASONS

Introduction

1. The appellant appeals with permission against the decision of the First-tier Tribunal Judge Shergill (hereinafter referred to as the "FtTJ") promulgated on the 5 March 2021 , in which the appellant's appeal against the decision to refuse her application for a residence card as confirmation of a retained right of residence under the Immigration (European Economic Area) Regulations 2016 ("the EEA Regulations") was dismissed.

2. The FtTJ did not make an anonymity order no application was made for such an order before the Upper Tribunal.

3. The hearing took place on 23 July 2021, by means of *Microsoft teams* which has been consented to and not objected to by the parties. A face- to- face hearing was not held because it was not practicable, and both parties agreed that all issues could be determined in a remote hearing. The advocates attended remotely via video as did the appellant so that she was able to hear and see the proceedings being conducted. There were no issues regarding sound, and no problematic technical problems were encountered during the hearing and I am satisfied both advocates were able to make their respective cases by the chosen means.

The background:

4. The background to the appeal is set out in the decision letter, the decisions of the previous two First-tier Tribunal Judges (Judge Pickup and Judge Foudy) and the decision of the FtTJ under appeal.

5. The appellant is a national of Nigeria. Judge Pickup set out the history at A129(AB) as follows. The appellant came to the UK illegally with the assistance of an agent she paid. It is claimed that she met her husband in 2008 after being in the UK for 2 years. He was then already a Spanish national but she did not know how that came about as he was born in Nigeria.

6. On 5 December 2009 the appellant married the sponsor.

7. In September 2010 she was issued with a residence card as a family member of her sponsor.

8. They were divorced on 16 March 2015.

9. On 14 July 2015 she made an application for a residence card on the basis of a retained right following termination of the marriage pursuant to the EEA Regulations 2006.

10. On 29 February 2016 a decision was made to refuse the application. The Secretary of State concluded on the information provided and for the reasons explained in the refusal letter the marriage was one of convenience and thus was not protected by the EEA Regulations.

11. The appellant appealed that decision and it came before FtTJ Pickup on 14 November 2017.

12. In a decision promulgated on 27 November 2017 FtTJ pickup dismissed the appeal having found that the respondent discharged the burden of proof on the balance of probabilities that the appellant's marriage was a marriage of convenience.

13. The FtTJ set out his findings of fact and assessment of the evidence at paragraphs [14]-[29] and they are summarised as follows:

    (1) The judge found the appellant to be a poor witness and reach the conclusion on the evidence as a whole, including explanations in oral and written evidence that she had not been true for the tribunal about a former spouse and the nature of the relationship (at [16]).

    (2) The judge was not satisfied on the evidence of the appellant and the sponsor genuinely live together, even if some documents showed a common address at sometimes (at [17]).

    (3) In the marriage interview the appellant stated that she and the ex-spouse had lived together throughout the period April 2009 the end of summer 2011 but also said the marriage got into difficulties in 2012 and that her spouse moved out in February 2013. The judge did not find that account to be entirely consistent with the evidence as to the addresses lived at and as set out in his factual findings.

    (4) In interview the appellant suggested her spouse had been a student between 2010 and 2012 when he finished. When pointed out to her that the P 60s for her husband, which she claimed he'd given in June/July 2015, showed different addresses, she said she didn't know any different addresses he might have lived at. She later said she wasn't actually aware when he stopped studying they claimed it was full time every day. The judge made reference to the immigration officer visiting the appellant's home when she gave an alternative address for her ex-spouse. Whilst the appellant had denied this, the judge found that there was no reasonable explanation for the information homing provided the immigration authority. Taking the evidence as a whole the judge found the appellant lacked credibility and did not accept that she had been truthful about that aspect of the claim (at [19]).

    (5) The judge took into account that the appellant was unable to stay to the witnesses were at their wedding and only knew them as the aunt and cousin of her ex-spouse whom she had met a few times prior to the wedding. The judge found that the interview was conducted long after the marriage terminated during which it was reported that they had lived together until 2013. The judge found it was not credible that she would meet his family members before the marriage and yet not at all after the marriage or that she had no clue as to their names despite several years of marriage. The judge noted that when she was challenged on this in oral evidence she said that in her culture one does not call people directly by the name but as, for example, the mother of the child's name. The judge rejected that explanation as "fanciful and unsatisfactory, and not at all believable". The judge also found that the appellant was "remarkably uninformed about his income and employment".

The judge rejected as not credible her claim to have been so illiterate that he handed all financial details and correspondence, particularly since she must have made a single person council tax discount application and as handle matters alone at least since he allegedly left in 2013. The judge found that there were no bank accounts in joint names in the appellant's bundle, only her own. When challenged as to why, she said no one had asked for them. The judge took into account the sum of the utility bills had both names, but many did not (at [20]).

(6) At [21] the judge found that the evidence "strongly suggest that during the period of the marriage the appellant and the former EA spouse spent considerable period living at separate addresses, undermining the claim to have been living together. The FtTJ set out the analysis of the evidence at paragraphs [21]-[24].

(7) At [24] the FtTJ reached a finding that the appellant was unable to satisfactorily explain the differences/discrepancies in the addresses and as pointed out in interview she said she was unaware of any other addresses that she had given an address to the immigration authorities. She had said that another male lived at the address and that her husband sometimes if there but also that he had a property at an address given at x which was an address that could not be verified as genuine.

(8) At [25] the judge found that her claim of a 25% discount as a single occupant in relation to council tax undermined her claim. The judge rejected explanation that she didn't give his name as he was a student at University because at the same time she could not clarify when he ceased being a student. Had he been such a student, that would have been reflected in the council tax document. The judge rejected as not credible her claim that her spouse told her that she did not need to declare why she was there with him because he was a student. The judge was satisfied that claim a single person discount she would have had to specifically make that application. He was satisfied that on any version of her events, the appellant had been dishonest about this aspect of her evidence.

(9) At [26] the FtTJ found that it was not credible in the application form signed on 22 June 2015 that the appellant claimed that she was unable to contact her ex-spouse. When interviewed she was asked where she got a documents form and confirm that she got from her ex-spouse in June/July 2015. When challenged on the evidence, she said when she was making the application her ex-spouse was agreeable to provide those documents to her. The judge found that that "undermined her assertion that she was not able to contact him". The judge also recorded that she told the tribunal that when she needed the documents she called him. She denied stating that she was unable to contact him and confirm that she was able to contact him in making the

applications. She claimed that it was only after the application was made that she was able to reach him. The judge found "none of this makes any sense and inconsistency in her explanation seriously undermines the credibility."

(10) At [27] the judge considered the appellant's oral evidence and her explanation as to why his name was not on the rental agreement even though she claimed she was living with him at the time. Her answer was that he was "not around" at the time and so she just put her own name on the agreement. The judge found that that appear to be inconsistent with the picture that she tried to paint of being illiterate and leaving all financial correspondence matters to husband.

(11) At [28] the judge concluded that having taken the evidence as a whole, he found the appellant "a poor and ultimately incredible witness, said that I do not accept any part of the claim. On the contrary, I'm satisfied that this is not a genuine marriage but one of convenience."

14. The appellant made an application to appeal that decision and it was refused on 18 May 2018. An application was made for permission to the Upper Tribunal but permission was refused on 19th of July 2018. The appellant had exhausted her appeal rights in July 2018.

15. The appellant made a further application for a residence card and this was refused by the respondent on 15 November 2018. The appellant appealed that decision before the FtT on 17 June 2019 and in a decision promulgated on 10 July 2019 FtTJ Foudy dismissed her appeal. The judge applied the principles in Devaseelan and found that the appellant had produced no new evidence that was incapable of being produced before the tribunal in 2017 and therefore the genuineness of the marriage was not open for review. The judge recorded at [5] that the evidence in the appellant's husband was new evidence that the judge found that that was evidence that could have been placed before the tribunal in 2017 as the appellant and her ex-spouse was still in contact and that "no good reasons" had been advanced as to why that evidence was not put before the tribunal therefore the judge found from the evidence that "there was no good reason to look behind a finding that the marriage is one of convenience." The judge also found that the appellant had also not demonstrated that her ex-husband was exercising treaty rights for a continuous period as required.

16. The appellant sought permission to appeal that decision but permission was refused by a FtTJ on 5 September 2019. A further application for permission to appeal made before the Upper Tribunal was also refused on 1 October 2019.

17. On 3 December 2019 the appellant applied for permanent residence card as confirmation that she was a former family member of an EEA

national. This was the appellant's 3rd application. It was refused by the respondent in a decision letter dated 14 March 2020.

18. The appellant sought to appeal this decision and it came before the FtT (Judge Shergill) on 23rd of February 2021. It is recorded from the decision that the judge heard no oral evidence from the appellant and that the appeal was decided on the papers to which both advocates agreed. The appellant had provided what was described as an updated version of her witness statement at a 23 – 28 setting out her history. Reference is made in that witness statement to the previous findings made by the FtT. In relation to the issue about the council tax, the appellant stated that she must have misunderstood the council tax official over the phone (paragraph 9) and that she was confused when she had filed her previous witness statement (paragraph 10) and paragraph 11 in relation to the application that she had signed, she stated that she had signed it without reading it. Other aspects of the witness statement refused to her being confused before the immigration judge and that she was not able to explain to the judge the full context and that she was confused and nervous and had made mistakes (paragraph 14). At paragraph 18 she set out the reason for the breakdown of the marriage and made reference to that as a result of her inability to conceive. At paragraph 2 24 she confirmed her marriage was not one of convenience but out of "stress, anxiety confusion grief of the breakdown of her marriage… And resulted in me not giving satisfactory answers to the Home Office during my interview and to the Honourable Judge of the First-tier Tribunal…".

19. The FtTJ applied the principles in Devaseelan to the appeal in the light of the 2 previous decisions. The findings of fact and assessment of the evidence is set out at paragraphs [11] – [23]. The judge undertook an assessment of the medical report which had been relied upon to provide an explanation for the adverse findings made by the previous tribunal judges. At [14] the judge concluded that there was nothing in the report to support the proposition that the evidence before the 2017 tribunal should be looked at retrospectively to explain or "cure the defect" and that appeal in the appellant's favour. The judge found that the evidence did not take the appellant's case in the direction she sought or as was submitted on her behalf and only confirmed current mental health issues, a recent past history and failed to show why any of that was relevant to the last 2 tribunal hearings for the judge to depart from the previous conclusions. At paragraphs [18]-[20] the FtTJ address the issues relating to the fertility claim which was also advanced as evidence on her behalf. The judge rejected that claim for the reasons set out in those paragraphs. At [22] the FtTJ concluded that the burden remained with the appellant to disprove that this is a marriage of convenience for that she failed to provide satisfactory probative evidence to move away from that starting point. The judge found that her evidence was "very weak2 and whilst the 2019 decision was short it relied upon the previous detailed

findings made by the tribunal in 2017 which were not successfully appealed. Thus the judge was not satisfied on the balance of probabilities that there were "very good reasons to depart from the 2017 and 2019 decisions under Devaseelan." At [23] the FtTJ stated "I am satisfied that the appellant has failed to discharge the burden of proof to show the marriage was not one of convenience." The FtTJ dismissed the appeal.

20. Permission to appeal was issued and permission to appeal was granted by FtTJ on Judge Keane on the 26 April 2021. It is important to set out the terms of the grant of permission.

21. Judge Keane stated as follows:

> "The grounds amounted to no more than a disagreement with the findings of the judge, an attempt to reargue the appeal and they did not disclose an arguable error or errors of law but for which the outcome of the appeal might have been different. I have however, considered the judge's decision in order to ascertain whether it disclosed a "Robinson obvious" error of law. The appeal gave rise to a single issue, namely whether the appellant and her EEA national spouse were party to a marriage of convenience. At paragraphs 22 and 23 the decision by way of self-direction the judge remarked, "the burden remained with the appellant disprove that this was a marriage of convenience …". Sadly, the judges self-direction was arguably irrational and the judge might preferably have directed himself so as to place the burden of proving that the marriage was indeed a marriage of convenience on the respondent. The application for permission is granted."

The hearing before the Upper Tribunal:

22. In the light of the COVID-19 pandemic the Upper Tribunal issued directions on that the provisional view was that it would be appropriate to determine the issue of whether there was an error of law and if so whether the decision should be set aside without a face to face hearing and that it should be a remote hearing. The parties did not provide any further representations as to the mode of hearing. The appeal was therefore listed as a remote hearing.

23. On the 6 May 2021, the respondent filed a Rule 24 response to the grounds.

24. The hearing was therefore listed as a remote hearing with both advocates providing their oral submissions. I am grateful to both advocates for their submissions.

25. Mr Emezie on behalf of the appellant submitted that permission had only been granted on one ground which related to the issue of the burden of proof. He submitted that this was a material misdirection in law by the FtTJ and that was clear from the relevant case law.

26. By reference to the rule 24 response and the submission that the FtTJ relied upon the decision of the previous judges, he submitted that that could not be correct because the judge had made his own findings of fact and therefore was not relying on the previous findings. The judge could not rely on the previous decisions and subvert or circumvent the statutory duty to apply the burden of proof.

27. Mr Emezie further submitted that the Secretary of State had made the point that the FtTJ's direction was poorly phrased but that could not be right because when looking at paragraph 23 there was no typographical area. It was a clear misdirection in law and therefore it is an error which the appeal court, namely the Upper Tribunal could not cure. The burden of proof was so fundamental it could not be cured by the Upper Tribunal.

28. Mr Emezie further submitted that an important consideration was the public confidence in the administration of justice and that justice must be seen to be done and the appellant should be able to understand what was being said. He further submitted that consistency was important in judicial decision-making and that the FtTJ was not consistent in applying the burden of proof. Thus he submitted this was a very strong case.

29. Mr Diwnycz on behalf of the respondent relied upon the Rule 24 response dated 6 May 2021. The reply referred to the grant of permission where the judge found the factual findings to be nothing more than a disagreement. The respondent submitted that in the light of those factual findings and based on the previous appeals where it was found that the appellant's marriage was a marriage of convenience, the Secretary of State had adduced adequate evidence to discharge the initial evidential burden stop it was submitted that the reality of the appeal before the present FtTJ was that the appellant was seeking to offer a reasonable explanation to the respondent's evidence raising a reasonable suspicion.

30. By reference to the decision at paragraph 6 – 9 it was submitted that the judge directed himself properly in law and that the issue before the tribunal was whether the appellant provided a reasonable explanation to confront the reasonable suspicion of a marriage of convenience which had been proven and upheld in the appellant's 2 previous appeals decisions. Therefore the judge did not need to assess whether the respondent to discharge the initial evidential burden as she had been found have done so in the 2 previous appeals which had been unsuccessfully challenged, the positive conclusions on the initial evidential burden on the respondent were binding on the parties as correctly noted by the judge at paragraph 8. In those circumstances the evidential burden transferred to rest upon the appellant to give an explanation to undermine the respondent's case.

31. It was submitted that whilst it could be said that the judge poorly phrased the sentences at paragraphs 22 and 23, the approach of the judge was nonetheless correct.

32. In his oral submissions, Mr Diwnycz submitted that this was a cogent and focused decision of the FtTJ and should be upheld.

33. No further submissions were made in behalf of the appellant.

34. At the conclusion of the hearing I reserved my decision which I now give.

Decision on error of law:

35. The appellant's case before the FtTJ was that she was entitled to a retained right of residence under Regulation as a former "family member of an EEA national". There was no dispute that she had married the sponsor on 5 December 2009. The issue was whether under the EEA regulations, the sponsor was not her "spouse", and so a "family member" because their marriage was a "marriage of convenience" (I refer to regulation 2 (1) defining "spouse" is not including "a party to a marriage of convenience".

36. The narrow point upon which permission has been granted is that the FtTJ failed to apply the correct burden of proof applicable in marriage of convenience cases by reference to paragraphs [22 – 23] of the FtTJ's decision.

37. Mr Emezie submits that there was a material misdirection made by the FtTJ. He further submits a set out above that such a material misdirection cannot be corrected as set out in the rule 24 response. He argues that the FtTJ did not only rely on the findings of the previous 2 judges but that the judge had made his own findings.

38. As to the suggestion made by the respondent that the FtTJ had made a typographical error or that it was "poorly phrased" Mr Emezie submitted that this was not the position and there was a clear misdirection in law and that the application of the burden of proof was so fundamental it could not be cured by the Upper Tribunal.

39. I have carefully considered those submissions and have done so in the light of the decision of the FtTJ, and the evidence before the tribunal.

40. The Immigration (European Economic Area) Regulations 2016 ('the Regulations') define a marriage of convenience as follows: "marriage of convenience" includes a marriage entered into for the purpose of using these Regulations, or any other right conferred by the EU treaties, as a means to circumvent - (a) immigration rules applying to non-EEA nationals (such as any applicable requirement under the 1971 Act to have leave to enter or remain in the United Kingdom); or

(b) any other criteria that the party to the marriage of convenience would otherwise have to meet in order to enjoy a right to reside under these Regulations or the EU treaties."

41. It is not disputed that in Rosa [2016] EWCA Civ 14 it was held that the legal burden was on the Secretary of State for the Home Department to prove that an otherwise valid marriage was a marriage of convenience so as to justify the refusal of a residence card under the EEA Regulations. The legal burden of proof in relation to marriage lay on the Secretary of State, but if she adduced evidence capable of pointing to the conclusion that the marriage was one of convenience, the evidential burden shifted to the applicant (paras 24 - 27).

42. Sadovska & Another and Rosa, that the legal burden of proof is on the Secretary of State and that that burden lies with the Secretary of State throughout although the evidential burden shifts to the appellant if there is a reasonable suspicion (and so the Secretary of State discharges the evidential burden upon her) that the marriage is one of convenience.

43. The FtTJ set out the relevant law at paragraphs [5]-[8] and there is no dispute that the judge was not in error in those self -directions and expressly at paragraph [6] where the judge stated “there is no burden at the outset of an application on the claimant to demonstrate that a marriage to an EEA national is not one of convenience”, and that the evidential burden started with the respondent.

44. However, when applied to this particular appeal it is of direct relevance that the appellant’s appeal started from a different point in the evidence as there had been 2 previous decisions by the First-tier Tribunal, Judge Pickup in 2017 and Judge Foudy in 2019, both of whom had reached the conclusion that the appellant was a party to a marriage of convenience. That being the case, in my judgement the respondent was correct to submit that the FtTJ was not required to assess whether the respondent had discharged the initial evidential burden as this had been satisfied by the decisions in the previous 2 appeals; the last one having only been made in July 2019. The judge correctly identified that the principles of the decision in Devaseelan applied to this appeal (see paragraph [8] of the FtTJ decision).

45. Therefore in accordance with the decisions set out above (Sadovska and Rosa), the evidential burden was on the appellant to provide her evidential explanation via any further evidence in order for the FtTJ to depart from the previous assessment. Whilst Mr Emezie points to the phraseology of the FtTJ set out at paragraphs 22 and 23, in my judgement those paragraphs need to be read in the light of the decision as a whole and the litigation history which included the 2 previous decisions and where 2 judges had reached the conclusion that the respondent had discharged the legal burden that the marriage was one of convenience.

46. The appellant did not start the appeal on the basis that there had been no earlier findings and therefore the legal approach taken by the judge by reference to those decisions and then considering the appellant's evidence was in fact correct.

47. As can be seen from the decision the FtTJ conscientiously considered the evidence that the appellant had relied upon to discharge the evidential burden on her. This consisted of the medical report and the issues arising from that.

48. The case advanced on behalf of the appellant was that the previous findings could be departed from because she could now provide an evidential explanation for her replies given in the marriage interview and any later evidence which had led to the earlier findings made by the 2 previous judges. This was described by the FtTJ as "some hitherto unknown medical condition or vulnerability" (at paragraph [12]). This was addressed by the FtTJ at paragraphs [12]-[21] of the decision.

49. The FtTJ summarised the medical report at paragraphs [12]-[13]. The judge reached the conclusion on the evidence that there was nothing in the report to support the appellant's contention that the evidence before the tribunal in 2017 (or 2019) should be considered retrospectively to cure the defects in the appeal in the appellant's favour or in other words in the medical evidence did not undermine or provide any explanation for the previous negative factual findings.

50. The judge found that the doctors report did not provide any opinion or assessment as to what her mental state might have been in 2017 when she gave evidence. Nor did the medical evidence explain the factual discrepancies which arose in the marriage interview which had been conducted earlier. The decision of Judge Pickup set out the discrepancies in the marriage interview and in her subsequent evidence which in his view went to the core of the appeal. As the judge stated in the current appeal, the medical report did not indicate any mental health difficulties going back that far or that any mental health issues may have affected her responses given in the Home Office marriage interview.

51. As the present judge identified, those interview responses formed "the backbone of the 2017 tribunal making adverse findings on which the appellant sought to challenge unsuccessfully in the Upper Tribunal and then in her witness statement dated 29/9/18" (at paragraph [14]).

52. The report confirmed her current mental health issues and the recent past history but it was open to the FtTJ to find the medical report failed to show why any of that was relevant to the last 2 tribunal hearings such the judge should depart from the earlier factual findings and conclusions reached.

53. The judge properly identified at paragraph [15] that it was unclear why the appellant who had been represented by competent legal representation in 2017 and 2019 was unable to advance medical issues relevant to the unreliability of the marriage interview that had taken place at those earlier hearings.

54. The FtTJ also considered the claim relating to the infertility issue. The medical report refers to the appellant's account where she claimed to the doctor that the relationship floundered in 2013 due to infertility issues. The judge contrasted that evidence with the appellant's witness statement which stated that the marriage ended in February 2013 and that her husband moved out in February 2013 (see paragraph 14-17). The judge invited the appellant's representative to identify any medical evidence which showed the appellant's husband as being involved in such treatment. However as set out at paragraph [18] the appellant's husband was not mentioned in any of the material but that at A68 (AB), the evidence demonstrated that the appellant had been attempting a pregnancy with a new partner in 2019. The judge also observed that the medical records relied upon only went to Page 6 of 23 and observed that that was of concern if reliance has been placed on partial records that the full run of those records should have been provided.

55. At paragraphs [18- 19] the FtTJ set out the evidence concerning the claim relied upon by the appellant relating to infertility and that this was evidence the appellant sought to advance to demonstrate that the previous adverse findings were incorrect. In the light of the evidence before the tribunal the judge was entitled to reach the conclusion that the appellant's evidence was contradictory and did not support the claim and that her claim that all the years they went through trying for a baby, there was no such evidence before the tribunal and that the evidence post -dated her marriage breakup. As a judge observed at paragraph [20] the tribunal in 2017 was told that the marriage got into difficulties in 2012 and that her ex-husband moved out in February 2013 and that if that was correct, as now asserted that she had been having problems of infertility with her husband, it had not been explained why those infertility problems had not formed part of the hearing before the First-tier tribunal in 2017. That was in my view a legitimate question for the tribunal to ask and the judge considered that the evidence did not correlate with the marriage breakup.

56. The judge granting permission did not grant permission on the grounds as drafted having concluded they amounted to no more than a disagreement with the findings of the FtTJ and as an attempt to reargue the appeal. Mr Emezie did not seek to argue those grounds and sought to rely on the issue raised by judge Keane as to whether there had been a legal misdirection on the burden of proof.

57. I have set out the FtTJ's factual assessment because in my judgement it demonstrates that the conclusion reached by the judge upon the appellant's evidence that it did not displace the earlier findings or constituted evidence for the judge to depart from the 2 earlier findings was correct. Against that background, notwithstanding what the judge had stated at paragraphs 22 – 23, the judges approach taken overall and in accordance with those findings was entirely correct.

58. In my judgment whilst the phraseology used by the judge in the concluding paragraphs could have been better expressed, when considering the decision as a whole and on the particular basis upon which the appeal was conducted, there is no error of any materiality or one to demonstrate that the outcome would have been any different given those factual findings made on the evidence advanced on behalf of the appellant and when set against the earlier decisions of the FtTJ's in 2017 and 2019.

59. As Mr Emezie submitted an important consideration is public confidence in the administration of justice and where there had been 2 previous adverse decisions, the judge was right to consider the evidence advanced at the later hearing but was also entitled to reach the conclusion that that evidence failed for lack of cogency and credibility and as such failed to undermine the previous decisions of the FtT when deciding that the respondent had discharged the overall legal burden that the marriage was one of convenience.

60. For the reasons given above, I am satisfied that the decision of the FtTJ did not involve the making of an error on a point of law such that the decision should be set aside and the decision of the FtTJ shall stand.

Notice of Decision.

61. The decision of the First-tier Tribunal did not involve the making of an error on a point of law such that the decision should be set aside and therefore the decision of the FtT shall stand.

Signed Upper Tribunal Judge Reeds

Dated 29/7/ 2021.

NOTIFICATION OF APPEAL RIGHTS

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be received by the Upper Tribunal within the appropriate period after this decision was sent to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent.

2. Where the person who appealed to the First-tier Tribunal is in the United Kingdom at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is 12 working days (10 working days if the notice of decision is sent electronically).

3. Where the person making the application is in detention under the Immigration Acts, the appropriate period is 7 working days (5 working days if the notice of decision is sent electronically).

4. Where the person who appealed to the First-tier Tribunal is outside the United Kingdom at the time that the application for permission to appeal is made, the appropriate period is 38 days (10 working days if the notice of decision is sent electronically).

5. A "working day" means any day except a Saturday or a Sunday, Christmas Day, Good Friday, or a bank holiday.

6. The date when the decision is "sent' is that appearing on the covering letter or covering email.