



IAC-FH-CK-V1

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

Appeal Number: EA/06710/2019 (V)

THE IMMIGRATION ACTS

**Heard at Field House
On 29 January 2021**

**Decision & Reasons Promulgated
On 17 March 2021**

Before

UPPER TRIBUNAL JUDGE SHERIDAN

Between

**KLODIAN GJANA
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Ahmed, Evolent Law

For the Respondent: Mr Jarvis, Senior Home Office Presenting Officer

This has been a remote hearing to which both parties have consented. The form of remote hearing was video by Skype (V). A face to face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. I did not experience any difficulties, and neither party expressed any concern, with the process.

DECISION AND REASONS

1. By a decision promulgated on 29 September 2020, Judge of the Upper Tribunal Coker set aside the decision of Judge of the First-tier Tribunal Head promulgated on 15 April 2020. I now remake the decision of the First-tier Tribunal.

2. The sole issue in dispute is whether the appellant's marriage to Mrs Kyro ("the sponsor") was a marriage of convenience under the Immigration (European Economic Area) Regulations 2016 ("the Regulations").

Background

3. The appellant is a citizen of Albania born on 7 December 1990.
4. The sponsor is a citizen of Greece born on 20 February 1978.
5. The appellant and sponsor claim to have met over Facebook in May 2017.
6. In September 2017 the appellant entered the UK unlawfully.
7. In October 2018 the sponsor entered the UK.
8. The sponsor and appellant claim that they met in person for the first time when the sponsor arrived in the UK and that since then they have lived together.
9. On 10 July 2019 the sponsor and appellant married.
10. On 17 July 2019 the appellant applied for a residence card to confirm that he was a family member of an EEA national exercising Treaty rights in the UK.
11. On 12 November 2019 the respondent interviewed the appellant and sponsor.
12. On 3 December 2019 the appellant's application for a residence card was refused. The sole reason given for refusing the application was that there were inconsistencies in the answers given at the marriage interview and consequently there were reasonable grounds to suspect that the marriage was entered into for the sole purpose of obtaining an immigration advantage.

Legal Framework

13. If the appellant is a family member of the sponsor he is entitled to a residence card pursuant to Regulation 18 of the Regulations.
14. Regulation 7 provides that a family member means, inter alia, a spouse.
15. Regulation 2 provides that a spouse does not include a party to a marriage of convenience. Regulation 2 also states that a marriage of convenience includes a marriage entered into for the purpose of using the Regulations to circumvent immigration rules applying to non-EEA nationals or other criteria that the party to the marriage of convenience would otherwise have to meet in order to enjoy a right to reside under the Regulations.

16. The Supreme Court in *Sadovska & Anor v Secretary of State for the Home Department* [2017] UKSC 54 explained:

29. For this purpose, “marriage of convenience” is a term of art. Although it is defined in the Directive and the 2009 Communication as a marriage the *sole* purpose of which is to gain rights of entry to and residence in the European Union, the 2014 Handbook suggests a more flexible approach, in which this must be the *predominant* purpose. It is not enough that the marriage may bring incidental immigration and other benefits if this is not its predominant purpose. Furthermore, except in cases of deceit by the non-EU national, this must be the purpose of them *both*. Clearly, a non-EU national may be guilty of abuse when the EU national is not, because she believes that it is a genuine relationship.

17. The burden of proof is on the respondent and the standard of proof is the balance of probabilities.

18. My role is not to review the lawfulness of the decision of the respondent but rather it is to assess for myself whether, on the basis of the evidence that is before me, the respondent has discharged the burden of demonstrating that, on the balance of probabilities, the appellant and sponsor entered into a marriage of convenience.

Summary of the Evidence

19. The respondent relies on the interview record sheet of the interviews of the appellant and sponsor which took place on 12 November 2019.

20. The appellant relies, inter alia, on the witness statements of the appellant and sponsor, both dated 13 March 2020; a number of photographs; a tenancy agreement; a council tax bill showing both their names; and various documents relating to employment and income. This evidence was before Judge of the First-tier Tribunal Head.

21. Upper Tribunal Judge Coker gave the parties leave to rely on further evidence. However, no further evidence was submitted by either party.

22. The appellant and sponsor did not make themselves available to be cross-examined. I asked Mr Ahmed why the appellant and sponsor were not giving oral evidence. His answer was that he had explained to them that this was a de novo hearing but they had chosen to not give evidence orally because they believed that they had adequately explained themselves at the previous hearing and in their witness statements.

Submissions

23. The hearing proceeded by way of submissions only. The submissions of both parties were extremely brief.

24. Mr Jarvis argued that I should adopt the findings of fact of Judge of the First-tier Tribunal Head. He submitted that these demonstrate that it was the purpose of both the appellant and sponsor to enter into a marriage of convenience. He argued that even if I did not accept this it was plain that the appellant sought to deceive the authorities and the sponsor, even if the sponsor had genuine motivations.
25. He also argued that I should draw an adverse inference from the appellant and sponsor electing to not put themselves forward to be cross-examined and have their evidence tested.
26. Mr Ahmed argued that the appellant and sponsor were asked numerous questions and from among these only six discrepancies were identified. He submitted that the witness statements provide credible explanations for the inconsistencies. He also stated that the appellant had provided documents showing that he and the sponsor live, and have lived, together and are a genuine couple. He added that the appellant and sponsor have professed love for each other.
27. I note that before Judge of the First-tier Tribunal Head it was argued on behalf of the appellant that the marriage interview was not conducted fairly. This argument was not advanced by Mr Ahmed before me.

Analysis

28. Mr Ahmed argues that there were only a few (he gave the figure of six) discrepancies that emerged from the numerous questions asked in the marriage interview and that the multiple questions answered consistently show that the respondent has not discharged the burden of proof. The difficulty with this argument is that the discrepancies are highly significant and no plausible explanation for them has been given in the brief witness statements adduced by the sponsor and appellant (only 14 paragraphs for the appellant and 28 for the sponsor). Unfortunately, because the appellant and sponsor elected to not be cross-examined, I have not had the opportunity to hear more detailed explanations which they may have been able to give. I do not draw an adverse inference from their non-attendance but their non-attendance means that they have not been able to address, or provide an explanation, for issues that arise from a consideration of the marriage interview record.
29. There are two inconsistencies in the marriage interview record, in particular, which lead me to the conclusion that I cannot rely on anything the appellant and sponsor have said. The first is the answers they gave to questions about the witnesses at the wedding ceremony. The sponsor stated that the witnesses were her good friend and work colleague called Julianna and Julianna's husband. She stated that she met Julianna whilst working at a hotel. The appellant, however, stated in his interview that the witnesses to the marriage were friends of his, and that they were each other's cousin. He stated that he met Julianna in Albania and that she became a friend of the sponsor through him.

30. Plainly, the sponsor and appellant gave entirely different accounts about how they knew the witnesses to their marriage ceremony and as to the relationship between the two witnesses. The sponsor acknowledged this in her witness statement and stated, by way of explanation, that she thought she had to have a friend of hers sign as a witness and she did not want to give away that Julianna was a friend of the appellant. She stated that she made up that she worked with Julianna because that was the first thing that came to her mind. With respect to the relationship between the Julianna and the other witness, the sponsor stated that she did not say that the other witness was Julianna's husband and that the words man and husband are the same in Albanian. These explanations are difficult to understand and, having only this brief explanation as set out in the witness statement to rely on, I do not accept them.
31. The second significant inconsistency is that in the marriage interview the sponsor, when asked about a photograph showing guests at her wedding, stated that they were cousins of the lady who married them who were brought there by her friend and that she did not know them. In response to the same question, the appellant described the people in the photograph as being his friends, whom he personally invited. Plainly, the appellant and sponsor gave entirely different accounts of the guests. The only discernible explanation for the discrepancy from within the statements of the sponsor and appellant is that the appellant says she thought the guests were related to Julianna. This does not explain why such different answers were given by the sponsor and appellant to these questions.
32. In her marriage interview, the sponsor described Julianna (the witness to her marriage whom she falsely said was a colleague/friend from work) as a "the lady who married us" (paragraph 44 of the interview record) and as the person who "said that she would marry us" (paragraph 28 of the interview record). This, at the very least, gives the impression that Julianna was involved in arranging the marriage and the witness statements do not dispel this impression.
33. I remind myself that the burden is on the respondent. The question for me to ask is whether, in the light of the totality of the information before me, the respondent has shown that it is more probable than not that the marriage between the appellant and sponsor was one of convenience as defined in the Regulations.
34. I am satisfied that the burden has been discharged by the respondent. The inescapable conclusion from the inconsistencies described above is that the appellant and sponsor were not truthful in their marriage interviews. The impression given by the sponsor's interview record is that a person whom she and the sponsor have referred to as Julianna arranged the marriage. Having regard to all of the evidence that was before me, I am satisfied that the respondent has discharged the burden of showing that it is more likely than not that the sponsor and appellant agreed between themselves to enter - and then proceeded to enter - into a marriage in order to confer on the appellant the right to reside in the UK under the Regulations.

Notice of Decision

The appeal is dismissed

Signed

Daniel Sheridan

Upper Tribunal Judge Sheridan

Dated: 10 March 2021