



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

Appeal Number: EA/00470/2021  
UI-2021-001315

**THE IMMIGRATION ACTS**

**Heard at Field House  
On: 1 April 2022**

**Decision & Reasons Promulgated  
On: 7 June 2022**

**Before**

**UPPER TRIBUNAL JUDGE KAMARA**

**Between**

MUHAMMAD ASIF JAVED  
(ANONYMITY DIRECTION NOT MADE)

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mr S Karim, counsel instructed by Law Lane Solicitors  
For the Respondent: Mr S Whitwell, Senior Home Office Presenting Officer

**DECISION AND REASONS**

Introduction

1. This is an appeal against the decision of First-tier Tribunal Judge Hanbury, promulgated on 13 October 2021. Permission to appeal was granted by First-tier Tribunal Judge Hollings-Tennant on 18 November 2021.

Anonymity

2. No anonymity direction has been made previously, and there is no application nor obvious reason for one now.

### Background

3. The appellant, who is a national of Pakistan, entered the United Kingdom during January 2015 under a visit visa. On 4 November 2019, he sought a residence card as the spouse of an EEA national, namely Todorka Georgieva Eftimova.
4. That application was refused on 13 March 2020, primarily on the basis that the marriage of the appellant and his sponsor was one of convenience.

### The decision of the First-tier Tribunal

5. Following a hearing before the First-tier Tribunal, the judge concluded that the respondent had discharged the burden of proving that the appellant had undertaken a marriage of convenience. The judge noted that the relationship was of short duration prior to the marriage taking place, that there were inconsistencies between the accounts of the appellant and sponsor and significant cultural and language differences between them.

### The grounds of appeal

6. The grounds of appeal made the following criticisms of the decision and reasons. Firstly, it was said that the judge erred in placing the burden on the appellant to show that the marriage was not one of convenience. Secondly, it was said that the judge had given inadequately reasoned findings for rejecting the consistent oral evidence and thirdly, the judge failed to adequately grapple with the appellant's documentary evidence.
7. Permission to appeal was granted on the basis sought. The judge granting permission did not consider that the first ground amounted to an arguable error but permission to appeal was not restricted.
8. In the respondent's Rule 24 response, dated 17 December 2021, the appeal was opposed.

### The hearing

9. Mr Karim relied on the three grounds of appeal. While he did not concede the first ground, the focus of his submissions was on the remaining grounds. In relation to the first ground, Mr Karim made the following points. The judge failed to apply the judgment in *Sadovska* [2017] UKSC 54, in terms of where he placed the burden of proof in this case. The judge erred in stating at [21] that the burden shifts back on the appellant as the evidential and legal burden was with the Secretary of State and at [24] in stating that the parties had not adequately contradicted the allegations.

10. Taking the second and third grounds together, Mr Karim argued that the judge was wrong to find that several of the issues listed by him at [22] amounted to evidence that the marriage was one of convenience. Specifically, that the appellant and sponsor had given consistent evidence regarding the sponsor's child in Bulgaria and the venue of the Islamic ceremony; there was no evidence that the sponsor had sponsored another applicant and the reference to the confirmation of joint bills did not point to a marriage of convenience. The judge did not set out the weight to be attached to the competing factors and did not engage sufficiently with all the evidence before him, including the consistent responses in the interview, character letters from attendees at the register office and photographs of the appellant and sponsor in informal settings. He urged me to find that the decision was unsafe.
11. Mr Whitmore relied on the Rule 24 response and argued that the judge directed himself appropriately as to the burden of proof and had found that the respondent had discharged it.
12. In relation to grounds two and three, there was no submission as to why the judge had erred in his reasons. The judge's comment on the suggestion that the sponsor had sponsored another application was more nuanced and suggests it was considered as a neutral point. The point made regarding joint bills was favourable to the appellant and the same point was made in the following paragraph. There was no requirement for the judge to attach weight to each issue, as long as the unsuccessful party knew why they had lost. The judge considered the appellant's explanation and set out what factors he took into consideration in reaching his conclusion.
13. At the end of the hearing, I announced that there was no material error of law in the judge's decision. I give my reasons below.

#### Decision on error of law

14. The first ground of challenge related to how the judge dealt with the burden of proof on proving a marriage of convenience. At [5] of the decision the judge correctly directed himself stating, 'once the appellant produces prima facie evidence of (the marriage) the burden of showing the marriage was one of convenience shifts to the respondent.' The judge indicates at this point that he will return to this issue and does so at [19], correctly quoting from *Papajorgi* [2012] UKUT 00038 in respect of there being no burden on a claimant to demonstrate that a marriage was not one of convenience. Furthermore, at [24], the judge applied his self-direction in respect of his findings, commenting that following an apparently valid marriage certificate and passport, the burden had shifted to the respondent to establish that the marriage was one of convenience and that the respondent had done so. The judge concludes this issue by stating that the evidence before him had not adequately contradicted the evidence which undermined the authenticity of the relationship. While the judge did not cite *Sadovska*, the findings of the Supreme Court as to the

burden of proof do not differ from the judge's application. This alleged error of law is not made out.

15. Mr Karim, in reference to the second ground, made several criticisms of three of the seven matters set out by the judge at [22] which were described as evidence pointing to a marriage of convenience. In short, these concerned the appellant being unable to provide details of his sponsor's child, that it was suggested that the sponsor had sponsored another spouse and that there were documents pointing to the joint payment of bills and cohabitation. The difficulty with this disagreement with the inclusion of these matters in this list, is that the judge, after considering the appellant's explanation, relied on different factors in concluding that this was a marriage of convenience.
16. The factors relied upon by the judge at [25] were the short duration of the relationship prior to the marriage (some 13 days), inconsistencies between their accounts as to the layout of their accommodation, inconsistencies as to their living arrangements and inconsistencies as to when and in what circumstances they met. The judge also took into account the lack of recognition by the appellant and sponsor as to the importance of marriage and the significant cultural and language differences. Mr Karim criticised none of these findings which I find the judge was entitled to make on the evidence before him.
17. The lists set out by the judge at [22] and [23] were no more than a summary of the respective parties' cases. At [23] he set out a list of issues which went against this being a marriage of convenience. This leads onto the third ground which amounts to an argument that the judge failed to place any weight on the evidence in support of the appellant's claim. The list of positive factors at [23] includes that it was suggested on the appellant's behalf that the parties to the marriage had been consistent in their evidence, that there was evidence in the form of photographs and videos to confirm the relationship as well as documentary evidence which corroborated a period of co-residence if not cohabitation of the appellant and sponsor. There is little support for the claim made in the grounds that there was inadequate consideration of the factors which supported the appellant's case. The remaining points made amount to mere disagreement with the outcome of the appeal and as such do not identify material errors of law.
18. There are no material errors in the decision of the First-tier Tribunal judge and accordingly the decision is upheld.

### **Decision**

**The making of the decision of the First-tier Tribunal did not involve the making of an error of on a point of law.**

**The decision of the First-tier Tribunal is upheld.**

No anonymity direction is made.

Signed: T Kamara

Date: 6 April 2022

Upper Tribunal Judge Kamara

### **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