



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

Appeal Numbers: UI-2022-004644
(EA/16301/2021)

THE IMMIGRATION ACTS

**Decision & Reasons Issued:
On the 09 November 2023**

Before

**UPPER TRIBUNAL JUDGE PERKINS
DEPUTY UPPER TRIBUNAL JUDGE DAVEY**

Between

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT
(ANONYMITY ORDER NOT MADE)**

Appellant

and

MRS AYAN ABDIAZIZ AHMED

Respondent

Heard at Field House on 6 February 2023

DECISION AND REASONS

1. The Appellant before the First-tier Tribunal was Mrs Ayan Abdiaziz Ahmed and the Respondent was the Secretary of State for the Home Department. For the purposes of this appeal that description is applied, although it was the Secretary of State's appeal against the decision of First-tier Tribunal Judge S Khan of 4 May 2022, wherein he allowed the appeal of the Appellant.
2. On 8 November 2022 permission to appeal was given by Upper Tribunal Judge Keith. The Respondent's position was that the First-tier Tribunal

Judge had simply failed to get to grips with the issue of false social media messages and its implications for the validity of the marriage and whether the marriage was in fact one of convenience. Further the judge's findings were criticised in relation to a similar issue in the determination because on one hand at paragraph 30 the judge had concluded that the messages were not genuine, yet at paragraph 33 concluded that the Respondent had not discharged the burden of proof to show that the messages were false messages. It was therefore apparent that there was a complete contradiction over the validity of the messages and the Judge's conclusion that the Respondent had failed to discharge the burden of proof of establishing that there was a marriage of convenience, was perverse.

3. It is also argued that the First-tier Tribunal Judge had failed to address the reasons why the Appellant had sought to rely on falsified evidence of his subsisting marriage or why a reliance on this evidence was not indicative that the relationship was not genuine given that no further evidence of genuine relationship was referred to by the First-tier Tribunal Judge as being provided by the Appellant or Sponsor. It is also to be noted that the judge took the view that the social media messages were not necessary to prove the relationship and therefore they bear on whether there was a genuine marriage. The judge set out the decisions in the Upper Tribunal in *Papajorgji* [2012] UKUT 00038 and *Sadovska* [2017] UKSC 54 but did not appear to relate them to the issues in the appeal.
4. We concluded that the judge's errors in dealing with the issues and his view that he took on the evidence raised by the Respondent was an error of law. It is unnecessary to reach a conclusion as to whether the judge was perverse but there was every appearance of irrationality as the Respondent had argued.
5. We concluded that the only sensible course was that the Respondent's appeal succeeded to the extent that the Original Tribunal's decision of 4 May 2022 could not stand. Given those issues, we also concluded that the only sensible and safe course was to remit this matter back to the First-tier Tribunal to be redetermined.

DECISION

The appeal is allowed to the extent that the Original Tribunal's decision cannot stand and the matter will be remade in the First-tier Tribunal. No findings of fact to stand and the matter to be dealt with de novo.

A handwritten signature in black ink, appearing to read 'T. Davey', written in a cursive style.

Signed

Date 26 October 2023

Deputy Upper Tribunal Judge Davey