



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

Appeal Number: IA/04500/2013

THE IMMIGRATION ACTS

Heard at Field House

On 30 July 2013

Determination

Promulgated

On 18 September 2013

.....

Before

UPPER TRIBUNAL JUDGE CRAIG

Between

MR CHIBUZO ORJI

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr S P Asamota, Solicitor of Graceland Solicitors

For the Respondent: Mr S Walker, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant, who was born on 22 August 1989, is a citizen of Nigeria. He claims to have arrived in this country on 4 December 2011, illegally, and on 12 December 2012, he applied for a Residence Card as a

confirmation of a right to reside in the UK as the spouse of Ms Gervil Makoua, an EU citizen exercising treaty rights in this country (she is a French national). The appellant had married Ms Makoua on 11 July 2012.

2. The appellant and Ms Makoua were called in for an interview with the respondent on 24 January 2013, following which the appellant's application was refused on 29 January 2012. The refusal letter is dated the same date. The respondent also considered whether or not the removal of the appellant would be in breach of his rights under Article 8 of the ECHR, but decided that it would not.
3. The basis of the respondent's decision was that in light of inconsistent and conflicting answers given by the appellant and Ms Makoua, when they were interviewed separately, the respondent considered that the marriage between the appellant and Ms Makoua was a marriage of convenience.
4. The appellant appealed against this decision, and his appeal was heard before First-tier Tribunal Judge K S H Miller, sitting at Taylor House on 17 May 2013.
5. In a determination promulgated on 5 June 2013, Judge Miller dismissed the appellant's appeal. At paragraph 20, he stated that because the appellant's Counsel had stated in her skeleton argument "that the sole issue to be determined ... was whether the appellant and his wife were engaged in a marriage of convenience" and "article 8 was not referred to", he agreed "that no argument under Article 8 lies in this case".
6. The appellant has appealed against this decision, and permission to appeal was granted by First-tier Tribunal Judge Astle on 24 June 2013.

Grounds of Appeal

7. In the handwritten grounds of appeal, it is submitted that Judge Miller made an error of law by not considering the appellant's appeal under Article 8. It is said that he had married an EU national and that his removal would be in breach of his rights under Article 8, because it would destroy his relationship with his stepchildren. It is also asserted that Judge Miller had failed to consider his relationship with his two brothers in this country who were both British citizens.
8. In setting out her reasons for granting permission to appeal, Judge Astle stated as follows:
 - “3. In the final paragraph of his determination the judge states that the skeleton argument provided ... that the sole issue was whether or not there was a marriage of convenience. In fact the skeleton argument expressly raises Article 8. In consequence it is arguable that the judge erred in not considering it. ...”
9. In the Rule 24 response submitted on behalf of the respondent, it is submitted that although it might have been an error not to mention Article

8, in light of the findings made regarding the genuineness of the marriage, this error was “arguably immaterial”.

10. Prior to the hearing before me, a skeleton argument was submitted on behalf of the appellant which had been prepared by Ms Saifolahi, the Counsel who had been instructed before Judge Miller on behalf of the appellant. Although it is asserted at paragraph 3 that the appellant relied upon Article 8 in the alternative, at paragraph 5.1, it is said that “the sole issue to be determined is whether or not the appellant and his wife are engaged in a marriage of convenience”.
11. It is accepted that this Tribunal found in *IS (marriages of convenience) Serbia* [2008] UKAIT 00031 that the burden of proving that a marriage is not a marriage of convenience rests upon the appellant.
12. Thereafter, essentially it is argued that the judge’s finding that the marriage was one of convenience was not open to him on the evidence. At 5.6 it is stated in terms “that the allegation that the appellant has engaged in a marriage of convenience is not sustainable”.

The Hearing

13. I heard submissions on behalf of both parties, which I recorded contemporaneously. As these submissions are contained within the Record of Proceedings, I shall not set them out in full, but shall refer below only to such part of these submissions as are necessary for the purposes of this determination. However, I have had full regard to everything which was said to be during the course of the hearing, as well as to all the documents contained within the file, whether or not specific reference is made to these items below.
14. On behalf of the appellant, Mr Asamota did not appear to rely on the skeleton argument at all. He began by apologising for the late service of the appellant’s bundle, which had been received the day before the hearing, and then proceeded to call the appellant to give evidence. He had to be reminded by the Tribunal that the issue which first had to be determined was whether or not there was any error of law in Judge Miller’s determination such that it should be set aside.
15. Mr Asamota then submitted that Judge Miller had been wrong to mention in his determination how the appellant had come into this country. He put the appellant’s case on this point in this way:

“I don’t feel that this was an issue of law. At the end of the day, he [the appellant] tried to make himself permanent in this country by marrying an EEA national.”
16. Mr Asamota then referred to the fact that the appellant and his spouse had unfortunately been called for an interview and that because of answers he and his wife had given, these were not satisfactory to the respondent, which led to a refusal on the basis that this was not a genuine

marriage. However, he was saying that the marriage was a proper marriage, a genuine marriage, and that therefore he ought to be allowed to stay under EU law. If the Tribunal accepted that the marriage was genuine, then he was also entitled to remain under Article 8.

17. In answer to a question from the Tribunal, Mr Asamota accepted that if the Tribunal did not accept that the marriage was genuine, his Article 8 claim would also fail. However, Mr Asamota believed that the appellant had satisfied the requirements of the Rules by “marrying a genuine person”.
18. In answer to a question from the Tribunal as to where it was claimed Judge Miller had made an error of law, Mr Asamota replied that he had made the decision on the basis of credibility. It had been unfair for the appellant and his wife to be called in for interview. Although people were sometimes now called in for interview, obviously there were some discrepancies with some of the answers which were made, but it had not been fair to call them in for interview. The evidence which they had put before the respondent was sufficient.
19. Although Mr Asamota could not say that it was unfair in itself to call the appellant and his wife in for interview, because this was a part of procedure, because the interview was random, the appellant was not mentally ready at the time. Although the respondent decided that because some of the answers made were not consistent, this was not a genuine marriage, that was not a proper basis on which to say that this was not a proper marriage.
20. On behalf of the respondent, Mr Walker submitted that there was nothing in the Article 8 point. This must stand or fall with the EEA application. It was clear from the determination that Judge Miller had considered the evidence he heard on the day from the appellant and Ms Makoua, his “wife”, when making his findings at paragraph 8. However, following consideration of all the evidence, including the answers given in the marriage interviews, the judge made clear conclusions at paragraph 19. He was not satisfied that this was a genuine marriage. He was also entitled to consider the previous immigration history of this appellant as being relevant to his credibility.
21. In reply, Mr Asamota again said that the issue here was whether the marriage was genuine. When reminded by the Tribunal that the issue was whether or not the judge had been entitled to find that it was not, Mr Asamota said that he felt that how a person came into the country should not be a basis for deciding a decision in a court hearing. He was not saying it was irrelevant, but at the end of the day, the appellant had tried to regularise his stay by marrying someone. The focus should be on the fact that he had married an EU national and not on his previous deception.

Discussion

22. I have set out the submissions made on behalf of the appellant in some detail, because in my judgment it is apparent that there is no basis whatsoever for asserting that Judge Miller's finding that the marriage of the appellant and Ms Makoua was not genuine was either not open to him or inadequately reasoned. He gave appropriate consideration to the relevant authorities (in particular the Tribunal decisions in *IS* and *Papajorgji (EEA spouse - marriage of convenience) Greece* [2002] UKUT 00038) and he considered fully the arguments advanced before him. He considered the disparities in the accounts given by the appellant and Ms Makoua in their interviews (which are set out in the refusal letter) and at paragraph 18 gives his reasons for the finding he makes that the marriage is one of convenience. The submission, advanced on behalf of the appellant before me, that the manner in which the appellant had entered this country was not relevant because "at the end of the day he had tried to make himself permanent in this country by marrying an EEA national" does not, in my judgment, help his case at all. Neither the arguments advanced within the grounds nor within the skeleton argument nor in oral submissions before me disclose even an arguable case that Judge Miller's finding was not open to him.
23. So far as Article 8 is concerned, the appeal is also unarguable on this basis. In light of the finding that the marriage was one of convenience, the appellant cannot argue that he has any family life here at all. It was not argued before me that the appellant should have been allowed to stay because of a relationship with his brothers, and nor was it argued that he even had a family life with these brothers in this country. Even if he did, in the circumstances of this case, his removal would clearly be proportionate.
24. There being absolutely no basis whatsoever upon which this Tribunal could find that Judge Miller's determination contained any material error of law, it follows that this appeal must be dismissed, and I so find.

Decision

There being no error of law in the determination of First-tier Tribunal Judge Miller, this appeal is dismissed.

Signed:

Date: 31 August 2013

Upper Tribunal Judge Craig