Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: EA/07668/2017

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 02 August 2019	**On 07 August 2019**

Before

UPPER TRIBUNAL JUDGE KEBEDE
UPPER TRIBUNAL JUDGE MARTIN

Between

LIZ DANITZA MARTINEZ PEREZ

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr K Jegede of Ashton Ross Law
For the Respondent: Mr N Bramble, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a Bolivian national born on 27 October 1985. She appeals, with permission, against the decision of the First-tier Tribunal dismissing her appeal against the respondent's decision to refuse to issue her with a residence card under the Immigration (European Economic Area) Regulations 2016 as the family member (spouse) of an EEA national.

2. The background to this appeal is as follows. The appellant entered the UK illegally in August 2013, via the Republic of Ireland. On 24 April 2014 she submitted an application for an EEA residence card on the basis of being the

spouse of a French national, [DB], whom she had married on 18 January 2014. Her application was refused on 8 April 2015 and an appeal against that decision was dismissed on 3 October 2016. The appellant and Mr [B] subsequently divorced on 31 January 2017 following a decree nisi issued on 14 December 2016.

3. The appellant claims to have entered into another relationship in May 2015, with a Spanish national from Ecuador, [WJ], whom she married on 18 March 2017. On 22 March 2017 she submitted an application for an EEA residence card on the basis of that marriage. On 4 September 2017 the appellant and her husband attended a Home Office marriage interview, following which, on the same day, her application was refused and she was served with a liability to removal notice. The appellant appealed against the decision under the EEA Regulations. On 13 September 2017 she made a further application, for leave to remain on Article 8 grounds. That application was also refused, on 25 September 2017, and was certified as clearly unfounded under section 94(1) of the Nationality, Immigration Act 2002. The appellant sought to appeal that decision as well, but the appeal was subsequently withdrawn after it was accepted by her representative that she was not entitled to an in-country right of appeal.

4. The basis for the decision made under the EEA Regulations was that the appellant's marriage was one of convenience and that she was therefore not a "spouse" for the purposes of Regulation 2. The respondent considered that there had been numerous inconsistencies and discrepancies arising from the marriage interview which led him to conclude that the claimed relationship was not genuine and that the marriage of 18 March 2017 had been undertaken for the sole purpose of remaining in the UK. The respondent provided details of the inconsistencies between the evidence of the appellant and the sponsor at the marriage interview and the discrepancies in the evidence, which included differing accounts of who completed the application form and received notification of the interview; the appellant's lack of knowledge of her previous husband's first name and the sponsor's lack of knowledge of her previous marriage application and appeal and of her divorce and separation from her first husband; inconsistencies in the evidence of the sponsor's immigration history; inconsistencies in the evidence about the sponsor's child and her previous visit to the UK; inconsistencies in the account of when they first met and their subsequent meeting; inconsistencies about where they first lived together and a lack of evidence of that residence; and the appellant's lack of knowledge about the sponsor's recent visit to the GP.

5. The appellant's appeal came before First-tier Tribunal Judge Callow on 23 November 2018 and was listed together with the human rights appeal HU/14007/2017 which, as stated above, was accepted as being an invalid appeal and subsequently withdrawn. The judge heard oral evidence from the appellant and the sponsor and then, having reserved his decision, resumed the proceedings at a further hearing on 19 April 2019 after concluding that the appellant ought to be given an opportunity to provide further evidence to clarify the documents submitted. The appellant and sponsor gave further oral evidence at the resumed hearing.

6. Judge Callow considered, in his decision, that the appellant and sponsor were poor witnesses who lacked knowledge of each other's backgrounds. He noted that they did not know each other's working hours and that they had given inconsistent evidence about the occupants of the property where they lived. The judge considered that the discrepancies in the evidence were of such significance that he found the marriage to have been entered into for the purpose of the appellant gaining an immigration advantage and that the marriage was one of convenience. Accordingly he concluded that the respondent had properly refused to issue a residence card to the appellant under the Regulations and he dismissed the appeal.

7. The appellant sought permission to appeal to the Upper Tribunal on the grounds that the judge had failed to give reasons for determining that the appellant and EEA sponsor lacked knowledge of one another's backgrounds and that they were poor witnesses; that the appellant and sponsor had been aware of each other's hours of work but had given incomplete information and the judge ought to have sought further clarification in that regard rather than concluding that it demonstrated the marriage to be one of convenience; that the judge ought to have given the appellant and sponsor an opportunity to respond to the concerns about the additional tenant at their property; and that the judge had erred by focussing on a handful of discrepancies arising from the marriage interview rather than giving weight to the rest of the questions and had failed to give weight to the bundle of evidence.

8. Permission was granted by First-tier Tribunal Judge Hollingworth in a decision of 13 June 2019 on all grounds.

9. The matter then came before us and both parties made submissions, with Mr Jegede relying and expanding upon the grounds of appeal and Mr Bramble submitting that the appellant had had plenty of opportunity to address all relevant matters of concern and that the judge had not erred in his decision.

Discussion and findings

10. We do not consider that this is a case where permission ought to have been granted in the first place. Judge Hollingworth's reference to "insufficient analysis" and an "attribution of weight" is simply an endorsement of what is essentially a disagreement with Judge Callow's decision. The weight to be accorded to the evidence was a matter from the judge and he was perfectly entitled to conclude that the concerns he raised, and those of the respondent, were sufficiently weighty to outweigh any areas of consistency which otherwise arose from the evidence at the marriage interview.

11. The first challenge in the grounds is an assertion that the judge made broad and general assertions as to the parties' lack of knowledge of one another's backgrounds and to being poor witnesses, without giving reasons. However it is clear from his observation to that effect at [21] that he was specifically referring back to the evidence from the interviews and the

respondent's concerns arising from that, as set out in detail in the earlier part of his decision, and to the sponsor's and appellant's attempts to address those inconsistencies and discrepancies.

12. It was not the case, as Mr Jegede suggested, that there were only a handful of inconsistencies arising from the parties' hours of work and their co-tenants, but there were clearly concerns about many issues of which those matters only formed a part. The appellant and sponsor had clearly demonstrated limited knowledge of each other's immigration history, the sponsor knew little or nothing of the appellant's former marriage and application and appeal on that basis despite the fact that the matter was still ongoing for some time after their own relationship had allegedly begun, there were concerns about the appellant's knowledge relating to the sponsor's daughter, there were concerns about the parties' recollection of the occasion when they first met and there were inconsistencies in their evidence about their living arrangements. The judge considered and analysed the appellant's attempt to address those concerns at [10] and the appellant's and sponsor's attempts to address the matters in their supplementary statements and oral evidence at [13]. It is clear that the first few lines of [21] were his conclusions on that analysis of the evidence as opposed to generalised and unreasoned statements, as asserted in the grounds.

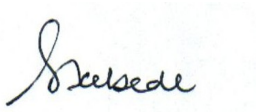
13. With regard to the assertions made at [4] and [5] of the grounds and by Mr Jegede in his submissions, that the judge ought to have recognised that the appellant and sponsor had simply given incomplete information about each other's working hours and ought to have been given an opportunity to clarify the matter further, it was not for the judge to lead the parties in their evidence but he was entitled to assess the evidence as it was presented to him. Likewise, with regard to the evidence about the additional tenant in their property it was not for the judge to probe further but he was entitled to consider the evidence as it was presented to him. The appellant and sponsor had more than ample opportunity to address all relevant matters and to give full details of all aspects of their lives, having had the benefit of a resumed hearing and a further chance to clarify and expand upon the evidence, all with the assistance of legal representation. The grounds, at [5] and [6], in seeking to elaborate on the evidence and to suggest reasons for the discrepancies in the evidence, quite simply fail to demonstrate any error on the part of the judge.

14. As for the suggestion at [8] of the grounds, that the judge ignored the positive features of the appellant's and sponsor's evidence at the interview but relied only on the "handful of discrepancies", that is simply not the case. The judge clearly undertook a full and careful analysis of all the evidence in the round and, having appropriately considered the burden and standard of proof in accordance with the relevant authorities, provided cogent reasons for concluding that the relationship was not a genuine one and that the marriage had been entered into solely to provide a basis for the appellant to remain in the UK. There was nothing erroneous or unlawful in the judge's approach to the evidence. He was fully and properly entitled to conclude that the appellant had entered into a marriage of convenience and that she was not, therefore,

entitled to a residence card as the family member of an EEA national. There are no errors of law in the judge's decision.

DECISION

15. The making of the decision of the First-tier Tribunal did not involve an error on a point of law. We do not set aside the decision. The decision to dismiss the appeal stands.

Signed:  Dated: 2 August 2019

Upper Tribunal Judge Kebede