



**Upper Tribunal
(Immigration and Asylum Chamber)
IA/25202/2013**

THE IMMIGRATION ACTS

**Heard at Field House
On August 27, 2014**

**Determination
Promulgated
On August 29, 2014**

Before

DEPUTY UPPER TRIBUNAL JUDGE ALIS

Between

**MR NIRMAL SINGH NOOR
(NO ANONYMITY DIRECTION)**

Appellant

and

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

Respondent

Representation:

For the Appellant: Miss Mallick, Counsel, instructed by
Bhagal

Partners Solicitors

For the Respondent: Mr Duffy (Home Office Presenting
Officer)

DETERMINATION AND REASONS

1. The appellant, born September 24, 1977, is a citizen of India. On September 27, 2004 the appellant was granted leave to enter the United Kingdom as a visitor. He overstayed and on September 30, 2009 he applied for further leave to remain but this was refused on

December 8, 2010. On February 8, 2013, following a religious ceremony some months earlier, he married his wife, Krisztina Boros. On February 12, 2013 he applied for a residence card based on his marriage to an EEA national. The respondent refused the application on June 4, 2013.

2. The appellant appealed to the First-tier Tribunal under Regulation 26 of the Immigration (European Economic Area) Regulations 2006 on June 5, 2013 and on April 2, 2014 Judge of the First Tier Tribunal Edwards (hereinafter referred to as the "FtTJ") heard his appeal and dismissed it in determination promulgated on April 7, 2014.
3. The appellant lodged grounds of appeal on April 14, 2014 and on May 16, 2014 Judge of the First-tier Tribunal Levin granted permission to appeal finding it arguable the FtTJ had erred. The matter came before me on July 7, 2014 and after hearing submissions I found there had been an error of law not least because the respondent's representative accepted:
 - a. The FtTJ referred to there being numerous discrepancies in their interviews but Ms Mallick pointed out that this was not the case. With regard to the matter referred to by the FtTJ at paragraph [11] Ms Mallick reminded me that the witness had addressed this in her witness statement and no weight had been given to this by the FtTJ.
 - b. Ms Everett conceded the fact the couple did not have a joint bank account could hardly be classed as significant because many people do not have joint accounts.
 - c. The FtTJ classed the child as a child of convenience without putting this to the witnesses.
 - d. There had been no consideration of article 8 or Section 55 of the Borders, Citizenship and Immigration Act 2009.
4. I adjourned the case until today's date and I preserved findings of facts and issued directions.
5. The preserved findings were:
 - a. The appellant came to the United Kingdom in 2004 with leave to remain as a visitor until March 27, 2005.

- b. The appellant admits he overstayed and did not attempt to regularise his stay until he submitted an application for leave to remain on September 30, 2009. This was refused on December 8, 2010.
 - c. Whilst here as an overstayer he worked here illegally by undertaking various building jobs.
 - d. In January 2010 he met his wife and they exchanged words and texts in English although mutual friends translated more detailed conversations for them.
 - e. On December 10, 2012 they underwent a religious ceremony in Southall and on February 8, 2013 they married under English law in a civil service.
 - f. The appellant submitted his application for a residence card on February 12, 2013.
 - g. In August 2013 the appellant's wife discovered she was pregnant and the baby was born on March 17, 2014.
6. In order to qualify for a residence card the appellant has to demonstrate the marriage is not a marriage of convenience because Regulation 2 of the 2006 Regulations excludes spouses where the marriage is one of convenience. I made it clear in my directions that for the appellant to succeed in his application he will have to satisfy the Tribunal that his marriage is not one of convenience.
7. I made clear I would have regard to the case law of IS (marriages of convenience) Serbia [2008] UKAIT 00031 and Papajorgji (EEA spouse - marriage of convenience) Greece [2012] UKUT 00038(IAC).
8. I then issued directions as follows:
- a. The respondent was to confirm to the Tribunal and appellant's representatives within seven days of service of the directions whether they were challenging the appellant's claim that he is the father of the child born on March 17, 2014.
 - b. The appellant's representative was to serve any additional evidence on the Tribunal and respondent no later than August 13, 2014. Such evidence must

be served in accordance with Rule 15(2A) of the Tribunal Procedure (Upper Tribunal) Rules 2008.

- c. Both the appellant's and his wife's witness statements would stand as evidence-in-chief.
 - d. Hungarian and Punjabi interpreters were to be booked for the hearing on August 27, 2014.
9. On checking the Court file I note the administration at the Tribunal has left a lot to be desired as my earlier decision was sent out on July 16, 2014 on the basis I was remitting the decision to the First-tier Tribunal. Clearly this was not the case.
 10. The respondent did not respond to my direction but the appellant did file a bundle of documents containing an updated statement from the appellant and other documents. This 97 page bundle was in addition to the 322 page bundle that had been submitted to the First-tier Tribunal.

PRELIMINARY ISSUES

11. I asked, at the outset of the resumed hearing, Mr Duffy what the respondent's position was regarding the child's paternity bearing in mind the clear direction I had previously given. Mr Duffy indicated that the respondent had no evidence to contradict the appellant's claim that he was the father. I pointed out to him that the whole point of my earlier direction was to avoid this situation and he agreed he did not intend to raise paternity.
12. Miss Mallock then outlined the issues for the appeal and simply put she stated that if I was satisfied this was not a marriage of convenience (as considered in Papajorgji (EEA spouse-marriage of convenience) Greece [2012] UKUT 00038 (IAC) and IS (marriages of convenience) Serbia [2008] UKAIT 31) then the appeal should be allowed. She referred me to page 6 of the skeleton argument that she handed to me.
13. Mr Duffy indicated that having considered all of the papers he took the view that when the parties were interviewed the respondent was entitled to refuse the application. However, the respondent was unaware of the pending birth and now the appellant and his wife have a child and he was no longer disputing paternity. Mr Duffy's conclusion was that little would be served by requiring either the appellant or his wife to give

evidence in light of the material now before the Tribunal. He further confirmed that he had no submissions to make on the application.

FINDINGS

14. I did not require any submissions from Miss Mallock because of the stance adopted by Mr Duffy. I also had in front of me a detailed skeleton argument that addressed the issues.
15. When this application was made I am satisfied there were concerns that the respondent properly raised but I have to consider all of the evidence. There were discrepancies in their interviews and there is also the language issue. These issues have to be balanced against all of the evidence that has been submitted. There are statements from the appellant, his wife and the appellant's wife's mother. There are documents from the hospital that confirm the appellant's level of involvement in his wife's pregnancy, photographs and various utility bills.
16. Applying the guidance in Papajorgji and IS and having regard to all of the available evidence and preserved findings I am satisfied that the appellant has demonstrated on the balance of probabilities that this was not a marriage of convenience.

DECISION

17. There was a material error of law. I set aside the FtTJ's original decision .



18. I allow the appeal under the 2006 Regulations and I direct that the appellant be issued with a residence card.
19. Under Rule 14(1) The Tribunal Procedure (Upper Tribunal) Rules 2008 (as amended) the appellant can be granted anonymity throughout these proceedings, unless and until a tribunal or court directs otherwise. No order has been made and no request for an order was submitted to me.

Signed:

Dated:

Deputy Upper Tribunal Judge Alis

TO THE RESPONDENT

I do not make a fee award as I am not aware a fee was paid. Even if a fee had been paid I would not make an order because the appeal has been allowed as a result of further evidence that was not before the interviewing officer.

Signed:

Dated:

A handwritten signature in black ink, appearing to read 'S. K. Alis', with a horizontal line underneath.

Deputy Upper Tribunal Judge Alis