



**Upper Tribunal  
(Immigration and Asylum Chamber)  
IA/09652/2014**

**Appeal Number:**

**THE IMMIGRATION ACTS**

**Heard at Field House**

**Determination**

**On 12 January 2015**

**Promulgated**

**On 12 January 2015**

**Before**

**Deputy Upper Tribunal Judge MANUELL**

**Between**

**MR KULWANT SINGH**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Ms A Jones, Counsel  
(instructed by Bhogal Partners Solicitors)

For the Respondent: Mr T Melvin, Home Office Presenting Officer

**DETERMINATION AND REASONS**

1. The Appellant appealed with permission granted on 1 December 2014 by First-tier Tribunal Judge Frankish against the dismissal of his appeal seeking the issue of a residence card under regulation 7 of the Immigration (European Economic Area) Regulations 2006 (as amended) ("the EEA Regulations") by First-tier Tribunal Judge Baldwin in a determination promulgated on 15

October 2014. The Appellant is a national of India, born on 5 September 1968. He had denied that his marriage to a Hungarian national, i.e. an EEA citizen, was one of convenience.

2. Judge Baldwin found that (a) the Appellant's marriage was one of convenience, i.e., was a sham and (b) that the Appellant's spouse had not shown that she was a qualified person within regulation 6 of the Immigration (European Economic Area) Regulations 2006.
3. Permission to appeal was granted by Judge Frankish because he considered it arguable that the judge had reached an incorrect assessment of the evidence, given that the Appellant and his wife were having a child (as yet unborn), taking into account the decision in Papajorgji (EEA spouse - marriage of convenience) Greece [2012] UKUT 00038 (IAC).
4. By notice under rule 24 of the Upper Tribunal Procedure Rules, in the form of a letter dated 10 December 2014, the Respondent (the Secretary of State) indicated that she opposed the application for permission to appeal.
5. Ms Jones for the Appellant submitted that the judge had erred in his credibility findings, on which his decision under regulation 7 turned. There was a problem in the judge's use of language, who was disapproving of the Appellant's immigration history: see [20] of the determination. The judge had paid too much attention to the marriage interview record. There was a rebuttable presumption, not here rebutted by the Secretary of State, that the child of a married couple was theirs. The child had since been born and the birth certificate showed the Appellant as the father. Too much had been made of other matters. The judge's decision should be reversed.
6. Mr Melvin for the Respondent (the Secretary of State) relied on the rule 24 notice. There was no bias and the judge had used appropriate language. His decision was neither irrational nor perverse. There were, of course, no Removal Directions so the Appellant was free to make a fresh EEA application based on the facts as they now stood. The Secretary of State was not willing to concede the appeal in the light of the changed circumstances. The determination contained no material error of law.
7. In reply Ms Jones reiterated her submissions. The judge had taken too narrow a view of what constituted a sham

for these purposes. The fact that the Appellant might incidentally benefit from his wife's status did not invalidate the marriage.

8. At the conclusion of submissions the tribunal stated it found that there was no material error of law by First-tier Tribunal Judge Baldwin in his determination. The tribunal reserved its decision which now follows
9. It seems to the tribunal that the judge adopted a measured approach and allowed the facts which he found to speak for themselves. Clearly the evidence as to the child has moved on since the hearing, but the tribunal must look at the position at the date of the hearing. The judge heard and saw the witnesses for himself, a highly relevant advantage given that one of the issues was the ability of the spouses to communicate with one another, which went to the substance of their relationship. The judge was entitled to find that their medium of communication, English, was so weak that their claimed relationship was improbable. It followed that there were doubts over the civil ceremony relied on. Similarly, the immigration history of the Appellant was relevant for all of the reasons which the judge explained at [20] of the determination. While weight was a matter for him, the judge explained why he gave little weight to minor or peripheral matters: see [21] of the determination. The judge identified a number of matters which he considered were significant. Those findings were open to him.
10. The child had not been born as at the date of the hearing. There was no independent evidence of the Appellant's paternity produced and the judge explained why he was not satisfied about many elements of the evidence given before him. There was no reason why the judge should have believed the Appellant's evidence as to paternity in the face of the many discrepancies and deficiencies which the judge had identified in the evidence as a whole. The presumption that the child was the Appellant's could not arise before the child had in fact been born, at least in the immigration law context where different public policy issues arise compared with the family law context. The judge addressed that issue and explained his reasons adequately in [22] of the determination.
11. Article 8 ECHR was, of course, for another day, as was accepted on the Appellant's behalf.

12. For the reasons given above, no material error of law has been shown. The Appellant's onwards appeal fails and the determination stands.

**DECISION**

There was no material error of law in the First-tier Tribunal's determination, which stands unchanged

**Signed**

**Dated**

**Deputy Upper Tribunal Judge Manuell**