



IAC-FH-NL-V1

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

Appeal Numbers: IA/16090/2015  
IA/10759/2015

**THE IMMIGRATION ACTS**

**Heard at Stoke**

**On 18 March 2016**

**Decision &  
Promulgated  
On 18 April 2016**

**Reasons**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE CHAMBERLAIN**

**Between**

**SAJJAD AHMED  
ANNA MEZOFINE HORVATH  
(ANONYMITY DIRECTION NOT MADE)**

Appellants

**and**

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

Respondent

**Representation:**

For the Appellants: Mr. T. Mahmood, Kenneth Jones Solicitors

For the Respondent: Mr. A. McVeety, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. This is an appeal by the Appellants against the decision of First-tier Tribunal Judge Heatherington, promulgated on 5 August 2015, in which he dismissed the first Appellant's appeal against the Respondent's decision to refuse to issue a residence card as confirmation of his right to reside in the United Kingdom in accordance with the EEA Regulations, and in which he

dismissed the second Appellant's appeal against the Respondent's decision to issue removal directions.

2. Permission to appeal was granted as follows:

"The Judge failed to make any findings as to A1 & A2's claim that they initially communicated with each other via Erezy Translating or as to the level of communication between them at the date of the hearing. The Judge appears to accept that the respondent had met the evidential burden and raised a reasonable suspicion, although no reasons were given for this finding. Despite expressly stating the evidential burden in [35] the Judge went on to find in [37] that "*Taking into account the entirety of the evidence I found the oral evidence to be rehearsed and unconvincing*", which arguably indicates that he has applied too high a standard of proof. Finally, it is arguable that the comments made in relation to A1 & A2's differing ages and ethnicity were inappropriate."

3. The Appellants attended the hearing. I heard oral submissions from both representatives, following which I reserved my decision.

Submissions

4. Mr. Mahmood relied on the grounds of appeal.

5. Mr. McVeety accepted that there was no "out and out finding" in paragraph [35] that the Respondent had met the burden of proof to show that there was a reasonable suspicion that the marriage was one of convenience. I was referred to paragraph [25] where the judge made findings on how the Appellants met and their inability to communicate. He submitted that the judge did not have to make a finding on how exactly they had communicated. In paragraph [26] he found that they had had to use Google to communicate.

6. He submitted that it was not in doubt that the judge had considered that the Respondent had met the evidential burden justifying a reasonable suspicion. I was referred to paragraph [31]. The judge had found that this was the first Appellant's sixth application for a residence card. The first application which involved the second Appellant was made six days after the refusal of the first Appellant's application with a different EEA national. He accepted that it had not been expressly referred to, but submitted that the clear inference was that the judge had accepted that there was a reasonable suspicion that the marriage was a marriage of convenience.

7. In relation to the fact that the age gap between the two Appellants had not been put to them, he submitted that it was a fact which did not have to be put to them and was of obvious relevance. He submitted that the grounds did not state why the judge's findings were not open to him. There was nothing factually wrong with his findings. I was referred to page 17 of the grounds where it was submitted that an honest and plausible explanation

had been given, but the judge had rejected this and had made findings to the contrary. Nothing in the grounds pointed to where the judge had made a factual error, or an error of law. A common sense approach to Papajorgji showed that if the judge had found that it was a marriage of convenience, he had found that the Respondent had discharged the burden of proof.

8. Mr. Mahmood submitted that it was clear that the judge had taken the Appellants' ages and ethnicity into consideration, although he did not go as far as to say that it was prejudicial. The judge had noted the amount of previous applications made by the first Appellant. These factors had been taken into account. In paragraph [30] he had found that there was only a small number of inconsistent answers given at the marriage interview. The judge had applied a higher standard of proof than the balance of probabilities.
9. I was referred to paragraph [36]. The judge had found that the statement of the second Appellant's daughter was not independent evidence. However she had adopted this evidence in court. If there had been issues regarding her evidence, this could have been challenged in cross-examination, but this did not take place. Instead the judge had concluded that it was not independent evidence. The statements had addressed the concerns set out in paragraph [35].

#### Error of law

10. I have carefully considered the grounds of appeal, which run to some 12 pages and largely attempt to re-argue the case put before the First-tier Tribunal.
11. Although the judge does not expressly set out that he finds that the Respondent has satisfied the burden of proof to justify a reasonable suspicion that the marriage is one of convenience, I find that it is clear from paragraph [35] that he considers that the Respondent has provided evidence justifying the reasonable suspicion that the marriage is one of convenience. He states:

"The central question in this appeal is whether the relationship of the appellants is genuine. The evidential burden is on the appellants to address the evidence that justifies the reasonable suspicion that the predominant purpose of the marriage of the appellants was to secure residence rights. I have considered the factors which are inclined to show that the relationship was genuine against those which indicate otherwise. I have considered all of the documentary and oral evidence, including the photographs, submitted to me and the submissions."

He then lists ten factors that he took into account.

12. I find that it is clear from this paragraph that he considered that there was evidence justifying the reasonable suspicion. He set out the relevant case law in paragraph [23], and was aware that the initial burden rests on the Respondent. In paragraph [25], the first paragraph of his findings, he refers to the difficulties which the Appellants had in communicating when they met. In paragraph [30] he refers to the fact that at interview they knew little about each other's backgrounds. He refers to the six applications made by the first Appellant, including the fact that the first application which involved the second Appellant was made six days after the refusal of an application made with a different EEA national [31]. Further he has referred to the fact that four applications have been refused as evidence of a durable relationship was lacking, [32]. I find that it is clear from paragraph [35], and the preceding paragraphs, that the judge considered that the Respondent had met the initial burden, and that the burden had therefore shifted to the Appellants.
13. I find that there is nothing in the decision to suggest that the judge applied a higher burden of proof than the balance of probabilities. I have found above that although he did not expressly state that the Respondent had met the initial burden, it is clear that he considered that this burden had been met. In paragraph [34] the judge states "When assessing the evidence I made my findings of fact on the balance of probabilities". There is nothing to suggest that this is not the case. The judge found the oral evidence of the Appellants to be rehearsed and unconvincing [37]. He has given reasons for this, and I find that this finding was open to him. I do not find that this is evidence that the judge has applied a higher burden of proof to the evidence of the Appellants.
14. The findings made in paragraph [27] to [29] are mere statements of fact. It was submitted that these were not put to the Appellants, but given that they are statements of what is clearly the case, I do not find that this is an error of law. When setting out the factors taken into account in paragraph [35] the judge does not refer to them. There is nothing to suggest that he has placed any, let alone undue, weight on these factors.
15. In relation to the Appellants' inability to communicate when they met, and indeed after that, I find that the judge set out the Appellants' own evidence of their inability to communicate when they first met [25]. Given the second Appellant's evidence that she did not speak English, the finding that they were unable to communicate in the same language is a finding that was open to the judge. He states that it is difficult to know how they exchanged telephone numbers, and even if this was by using Erezy Translating, I do not find that it is an error of law that he did not make a finding on this. His finding that they could not communicate in the same language is a finding that was open to him on the basis of the evidence before him, and this finding has not been challenged. In paragraph [26] he states that the second Appellant claimed to have used Google to assist her after that, but he finds that even at the date of the

hearing, he is not satisfied that they are able to communicate with each other fluently

16. The Appellants have not submitted that the judge erred in law by taking into account any of the factors set out in paragraph [35]. I find that these factors were all relevant factors and it was open to the judge to take them into account when coming to his conclusion.

### **Notice of Decision**

The decision does not involve the making of a material error of law and I do not set it aside.

The decision of the First-tier Tribunal stands.

Signed

Date 14 April 2016

Deputy Upper Tribunal Judge Chamberlain