



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

Appeal Number: IA/24429/2014

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 14 July 2015**

**Determination Promulgated  
On 25 August 2015**

**Before**

**DEPUTY JUDGE DRABU CBE**

**Between**

**Mr MUHAMMAD ASLAM**  
(ANONYMITY DIRECTION NOT MADE)

Appellant

**And**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Ms S Haji of Counsel instructed by Kingswood Solicitors.  
For the Respondent: Ms Fujiwala, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant is a national of Pakistan and his date of birth is 1 March 1985. He appeals with permission granted by Judge Kelly, a Judge of the First Tier Tribunal following the dismissal of his appeal against the respondent's decision refusing to grant him an EEA Residence Card as the spouse of an EEA national exercising community Treaty rights in the United Kingdom.
2. The hearing before Judge Dickinson, a Judge of the First Tier Tribunal took place at Nottingham Justice Centre on 9 January 2015 and the

determination setting out reasons for the dismissal of appeal was promulgated on 26 January 2015. Permission to appeal to the Upper Tribunal was granted on 26 March 2015.

3. In granting permission Judge Kelly said, “Nevertheless, the Tribunal appears to have accepted that the parties had conceived a child together [paragraph 13 II of the decision]. Whilst it is clear that the Tribunal considered the psychological effect of the sponsor’s subsequent miscarriage as a possible explanation for their discrepant answers during a Home Office interview, it is arguable that it failed also to consider the extent to which the conception of a child and accepted trauma suffered by the parties as a result of its loss was directly relevant to the central issue of whether they had entered a marriage of convenience [paragraphs 1 and 2 of the application]. It is also arguable that in failing to refer to the evidence that the sponsor had taken out “Critical Life Insurance Cover” in respect of which the appellant was the beneficiary, the Tribunal failed to have regard to a further aspect of the evidence that was material to the issue of whether the parties had entered a marriage of convenience [paragraph 4 of the application]. These are matters, which either alone or in combination, arguably affected the outcome of the appeal. Permission to appeal is therefore granted on these grounds.”
4. At the hearing before me, counsel for the appellant, relying on her written grounds of appeal asked that the appeal be allowed. According to her, the FTT Judge’s finding that the marriage was one of convenience was unreasonable and against the weight of evidence, given that the burden of proof on an allegation of marriage of convenience rested upon the respondent. Ms Haji drew my attention to all the relevant evidence in the appellant’s bundle of documents which, she argued, established that the appellant and his wife are cohabiting, drawing my particular attention to the witness statements of the sponsor and appellant, photographs, medical reports, hotel confirmation document, letters of support from friends and appellant’s employment documents, tenancy documents etc. She pointed out that the FTT Judge had omitted to give any consideration to the Critical Life Insurance Cover in respect of which the sponsor had nominated the appellant as the beneficiary. This item of evidence, according to Ms Haji was crucial and its omission from consideration was a material error of law.
5. In response Ms Fujiwala agreed that the Judge had not mentioned the Critical Life Insurance Cover as an item of evidence that he had considered but she argued that a Judge was not required to mention in his determination every piece of evidence that he had seen and given consideration to.
6. Ms Haji further argued that the decision to refuse was also materially flawed in that the respondent had failed to carry out a home visit as required and had given no consideration to the couple’s attempt to

have a baby. At this stage Ms Fujiwala asked that the appeal be allowed but only to the extent of being remitted to the First Tier Tribunal for a fresh hearing.

7. Having given careful consideration to the reasons and decision as set out in Judge Dickinson's determination, the reasons that led the respondent to refuse the application, the records of interview the initial grounds of appeal and grounds of appeal for permission to appeal to the Upper Tribunal, the documents filed in support of the appeal including witness statements of the appellant and the sponsor, the terms of the decision granting permission to appeal to the Upper Tribunal, I have concluded that the decision of Judge Dickinson was certainly in material error of law. The Judge ignored material evidence such as the Insurance Policy, the couples' medically corroborated evidence of miscarriage and failed to provide any reasons for "disbelieving" the oral evidence that the appellant and his sponsor wife gave at the hearing of the appeal. The Judge has not even recorded what evidence was given by the appellant and his wife before him. His disbelief appears to have stemmed from discrepancies in the answers the two (appellant and the sponsor) gave to the over 500 questions they were asked by the respondent's interviewing officer. Instead of carrying out a holistic assessment of the answers and noting that most answers given were consistent internally as well as externally the Judge focussed solely on inconsistent answers without any regard to the circumstances that had played a part in the way that the appellant and the sponsor had reacted to the questioning. I am also concerned about the contents of paragraphs 5 to 10 of Judge Dickinson's decision. These paragraphs set out the Judge's understanding of the burden and standard of proof applying to an allegation of marriage of convenience. I have found the contents unclear and somewhat muddled. In my judgement the grounds of appeal supporting the application for permission to appeal are made out and the determination of Judge Dickinson, a Judge of the First Tier Tribunal is accordingly set aside as being in material error of law for the above reasons.
8. At this point I note that Ms Fujiwala had asked that the appeal be remitted to the First Tier Tribunal for a fresh hearing. Ms Haji, the appellant's representative, did not support the request. Ms Fujiwala offered me no reason as to why I should remit the appeal for a fresh hearing by the First Tier Tribunal. I have all the evidence before me to make a decision in respect of the appeal lodged by the appellant against the respondent's decision to refuse the application for the reasons given and notified on 29 May 2014. I therefore proceed to make the substantive decision in this appeal.
9. I have noted the contents of the appellant's application for grant of Residence Permit and the reasons given by the respondent for her decision to refuse as well as the record of the interview carried out by an Officer of the respondent. I have also taken account of all the

evidence submitted by the appellant and his spouse subsequent thereto including that tendered in the course of the appeal proceedings. I note that the decision to refuse the application was based solely on the inconsistent answers given by the appellant and the sponsor in response to the questions they were asked at their interview. Whilst it is true that there were a lot of inconsistencies in their answers, it is crucial to bear in mind that the sponsor/spouse was asked 335 questions and the appellant was asked were just over 280 in number.

10. I also note with some concern that the Interviewing Officer had been given information prior to conducting her interview that an allegation had been received from the Intelligence Unit that the appellant is entering into a "suspicious marriage" Ms Sue Wentworth, the Interviewing Officer has recorded in her Interview Summary Sheet that she "spoke to Intel prior to marriage interview". However she has not disclosed the nature and content of that conversation. It is safe to say, based on the contents of the Interview Summary Sheet that Ms Wentworth did not conduct or could not reasonably have conducted the interview with an open and objective mind.
11. In my view in carrying out an appraisal of the discrepancies, the nature and importance of the inconsistencies is relevant and I note that many are of the inconsistencies are of a fairly minor or even trivial nature. It is important therefore to look to the totality of answers, the context of the questions and the attitude displayed by the appellant and his sponsor in providing the answers. It is evident upon reading the record of the interview that the sponsor made it clear that she was unsure of her memory and at times appeared annoyed that too much detail was being asked and displayed her annoyance by being flippant at times. It is also obvious to me that the two were giving answers while they were still suffering from the trauma arising from the loss of their baby. It is also important to note that both the appellant as well as the sponsor showed no great desire to live in the United Kingdom permanently. I also note that in many, many answers the appellant was noted as being "inaudible". On balance I believe the information given in the interview was not so contradictory or inconsistent as, bearing in mind all the relevant circumstances as well as the context of questions asked, to justify the conclusion that the marriage of the appellant was one of convenience.
12. The substantial evidence that points in the direction of this marriage being genuine when put in balance as against the discrepancies at the interview far outweighs the inconsistencies that arose in the answers given to the questions asked. In this context I give due weight to the Critical Insurance Policy which names the appellant as the beneficiary. I also give weight to the photographs tendered in evidence taken at various times which I find demonstrate body language of love between the appellant and his spouse. I also give weight to the tenancy agreement, which gives names of both as

tenants. I also give due weight to the fact pointed out by Ms Haji that the respondent should have but did not carry out a home visit before concluding that the marriage was one of convenience contracted for the sole purpose of securing right of residence in the UK.

13. I have noted the consistency of content in material respects in the letters of support from the friends of the appellant and his spouse. I have noted the corroborative evidence in respect of the miscarriage of their baby. On balance I am satisfied that the appellant's marriage to Natalija Naidionova, a national of Lithuania, exercising her community rights in the United Kingdom is genuine.
14. In the circumstances therefore I allow the appeal, as in my judgement, the appellant is entitled to be issued with a Residence Card as confirmation of a right of residence under European Community Law as the spouse of an EEA national exercising treaty rights in the United Kingdom.

K Drabu CBE  
Deputy Judge of the Upper Tribunal  
Date: 23 August 2015