



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

Appeal Number: IA/40690/2014
IA/40694/2014

THE IMMIGRATION ACTS

**Heard at Stoke
On 7th May 2015**

**Decision and Reasons
Promulgated
On 15th May 2015**

Before

UPPER TRIBUNAL JUDGE HANSON

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**TEREZIA PACAJOVA
HELAL AHMED**

Respondents

Representation:

For the Appellant: Mr McVeety – Senior Home Office Presenting Officer
For the Respondent: Mr Price instructed by Haque & Hausmann Solicitors
(Newcastle)

DETERMINATION AND REASONS

1. On 29th January 2015 First-tier Tribunal Judge V A Lowe promulgated the determination in this cause in which the appeals under the Immigration (EEA) Regulations 2006 were allowed.
2. The first appellant is an EEA national, being a citizen of Slovakia, who claimed to be in the UK exercising treaty rights. The second appellant is a national of Bangladesh with a poor immigration history who

applied for a residence card as confirmation of a right to reside in the United Kingdom as the first appellant's spouse. Both parties were interviewed on 6th October 2014 following which the respondent concluded they were not able to adequately communicate with each other such that it is said the decision maker failed to see how a couple could be in a subsisting and durable relationship without being able to properly communicate. As a result it was said the marriage was one of convenience entered into in an attempt to gain a residence document via fraudulent means.

3. The Judge was able to consider the written material and hear oral evidence from the first appellant. The second appellant was not available as he had been removed to Bangladesh.
4. The findings are set out from paragraph 17 of the determination. The issue before the Tribunal related to whether the marriage was one of convenience. The Judge also thought it necessary to comment upon the removal of the second appellant when such had not been shown to be unlawful or successfully challenged by way of judicial review. The amendments in the Immigration Act 2014 permit removal in some EU cases even when an appeal is pending. Section 10 permits removal with an out of country rights of appeal which is the will of Parliament. The fact of the matter is that the second appellant was not present, no arrangement had been made for video evidence, and his removal had not been shown to be unlawful.
5. The second element that appears to have occupied the Judges mind is the evidence provided by the respondent in support of the claim the marriage was one of convenience. The purpose of a judge is to assess the weight to be given to the material made available and to make a reasoned decision based upon that evidence. In this case the Judge is critical of the structure of the interview suggesting that the respondent should have proceeded by providing the interpreters requested and asking questions about the facts of the relationship.
6. The appellants were provided with the interpreters they sought as they were asked questions with the assistance of those interpreters. The issue was not to ascertain whether the appellants were aware of the colour of the curtains in the bedroom or how or where they met but whether they could communicate adequately with each other. The theory being that those in a relationship should at least be able to communicate. This is tested by the provision of an interpreter in the required language and the posing of a scenario which the person being asked has to communicate to the other partner. It was the quality of the replies given that determined the refusal.
7. There is no justifiable criticism of the methodology used which is a matter for the respondent. Those in this jurisdiction who have seen many such interviews are aware of the value for both parties in

establishing claims to be able to communicate, or not as the case may be.

8. Notwithstanding the above, the Judge also considered the relevant evidence and makes the following findings:
- “I have to say that I do not find the alleged answers given to scenarios as showing that the second appellant could not understand Slovak Gypsy so that he and his wife could not communicate. Not only was the language used standard Slovak but it appears to me that the gist of the scenario was repeated in each case. I appreciate that there were some errors but there was no evidence that the second appellant simply could not understand. To me, it appears to be a quite credible attempt at questions put orally in an unfamiliar language with no prior notice. Indeed, my opinion is that it positively shows that the couple can communicate in practical situations albeit with the need in real life to check that each other has understood when a particular time of day is mentioned” [para 19].
 - “The couple apparently started a relationship in March 2013 and cohabitation about 3 months later. There is evidence of cohabitation and their consistent address and of the first appellant’s pregnancy, the first antenatal appointment which she attended with her husband. There is nothing to suggest that they do not have a genuine relationship other than the content of the refusal.” [para 20].

Discussion

9. The respondent’s application for permission to appeal confirms that the second appellant was removed to Bangladesh on 23rd October 2014 in line with an order of the Upper Tribunal made in judicial review proceedings JR/12812/2014. It therefore appears to be a lawful removal.
10. The grounds assert the Judge allowed the appeals as he considered the interview inadequate, but this is not the case. The Judge refers to the level of understanding and makes findings upon the same. The assertion in paragraph 8 of the grounds that the appellants’ inability to communicate does raise sufficient reasons to suspect that the marriage is one of convenience and that the appellants have failed to discharge the burden of proof, is a disagreement with the finding made in the alternative.
11. Mere disagreement is not enough to establish arguable material legal error in most cases. The Judge not only considered the level of communication which appears to him to be adequate but the history of the relationship and the fact the first appellant was pregnant. That child has now been born and DNA test results provided at this hearing show the first and second appellant to be the biological parents.
12. It has not been shown the findings made are not adequately reasoned or perverse. The test is whether in all the circumstances the marriage has substance. The phrase ‘marriage of convenience’ relates to the

marriage at its inception which must be assessed at the date of the decision. As found in Papajorgji (EEA spouse - marriage of convenience) Greece [2012] UKUT 00038, a marriage of convenience in this context is a marriage contracted for the sole purpose or decisive purpose of gaining admission to the host state. A durable marriage with children and co-habitation is quite inconsistent with such a definition.

13. The finding the evidence supported a genuine relationship that led to marriage and the birth of a child and that the marriage was not one of convenience for the purposes of gaining admission has not been shown to be a findings contrary to the available evidence.

Decision

14. **There is no material error of law in the First-tier Tribunal Judge's decision. The determination shall stand.**

Anonymity.

15. The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005. I make no such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008).

Signed.....
Upper Tribunal Judge Hanson

Dated the 8th May 2015