



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

Appeal Number: IA/48763/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 9th October 2015**

**Decision & Reasons Promulgated
On 13th October 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE MANDALIA

Between

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

MR. MANSOOR ALI TARIQ

Respondent

Representation:

For the Appellant: Ms. J Isherwood, Home Office Presenting Officer

For the Respondent: Mr I Khan, Counsel instructed by Lincolns Solicitors

DECISION AND REASONS

1. This is an appeal against a decision and reasons promulgated by First-tier Tribunal Judge Swinnerton on 27th May 2014, in which he allowed an appeal under the Immigration (EEA) Regulations 2006, against the refusal of an application for a residence card.
2. The appellant is the Secretary of State for the Home Department and the respondent to this appeal, is Mr. Mansoor Tariq. However for ease of reference, in the course of this determination I shall adopt the parties' status as it was before the First-tier Tribunal. I shall in this determination,

refer to Mr. Mansoor Tariq as the appellant and the Secretary of State as the respondent.

Background

3. The appellant is a national of Pakistan who made an application dated 25 August 2014 for a residence card. The application was refused by the respondent for the reasons set out in a reasons for refusal letter dated 01 December 2014. The respondent reached her decision following a 'marriage interview' completed on 01 December 2014. During that interview completed via an interpreter, various scenarios were relayed to the appellant and his wife. A number of discrepancies were identified, and following that marriage interview in so far as it is material, the respondent stated in her decision;

"Due to the above, I have found that the couple cannot communicate with each other in a way that would be reasonably expected.

It is reasonable to expect someone that is in a genuine relationship would be able to communicate.

In view of the fact that you are unable to do so, there is no satisfactory evidence that you are in a genuine relationship with Liana Ana Maria Popa or that your marriage was contracted for genuine reasons. The evidence provided at interview shows that you do not know Liana Ana Maria Popa well and that you are not in a genuine and subsisting relationship with her, contrary to what you claimed at interview.

The Secretary of State is therefore satisfied that you knowingly entered into a sham marriage which was contracted for the purpose of evading immigration control.

In view of the above, the secretary of state considers it undesirable to permit you to remain in the United Kingdom in the light of your character and conduct as you have been involved in an attempt to evade immigration control by entering into a sham marriage."

4. At the hearing of the appeal before the First-tier Tribunal, both the appellant and Miss Popa gave evidence. They were both cross-examined about their domestic arrangements and specific questions were put to them as to exactly what they had done, on particular days. They were asked about how they communicate and the decision records their evidence;

"[15] The appellant confirmed that his wife speaks a little English and that he is now able to speak a lot of Romanian.

[17] There was brief examination of Miss Poppa.... She gave evidence that the appellant is teaching her English and that they also make use of Google to communicate.

[19] The Tribunal then asked some questions of Miss Popa who gave evidence that the appellant understands Romanian very well and that she speaks a little English."

5. In his submissions to the First-tier Tribunal, Mr Khan accepted that there was a communication problem between the appellant and Miss Popa. He submitted that a mix of languages was used by the appellant and Miss Popa, to communicate with each other. [24]

The decision of First-tier Tribunal Judge Swinnerton

6. The appeal was allowed. The findings of fact and reasons are succinct;

“[30]The evidence provided to the Tribunal at the hearing from the appellant and Miss Popa as to the nature of their relationship and the detail of their domestic life together was largely consistent. The Tribunal found that the accounts as to their shared life by both the appellant and Miss Popa were credible because of the consistency of their evidence in large part.

[31] It was clearly the case that Miss Popa was not able to communicate in English given the need for a Romanian interpreter. The appellant was able to communicate fluently in English and had no difficulty understanding questions and providing answers to those questions at the Tribunal. There was therefore no doubt as to the significant difficulty which the appellant and Miss Popa would have in seeking to communicate in English. That cast doubt on the claim in the witness statement of the appellant that he and Miss Popa communicate in English and that, although his wife could hardly speak a word of English when arriving in the UK, her English had improved considerably since then. The Tribunal found that the appellant and Miss Popa would not be able to communicate with each other solely in English.

[32] The appellant gave evidence that he was now able to speak a lot of Romanian with his wife. The Tribunal did not have before it evidence that the appellant was able to speak a lot of Romanian with his wife but found that it was credible that the appellant and Miss Popa would communicate using a mix of languages (namely English and Romanian) given that Miss Popa had now been in the UK for 2 years and it was reasonable to assume that her ability to communicate in English would improve in time, particularly as the Tribunal was informed that she had not returned to Romania since her arrival in the UK in May 2003.

[33] I therefore find that, in light of the totality of the information before me, I am not satisfied that on a balance of probabilities that the marriage of the appellant and Miss Popa is a marriage of convenience.”

The grounds of appeal

7. The respondent contends that in reaching the finding at paragraph [32] that the Appellant and Miss Popa would be able to communicate using a mix of languages, namely English and Romanian;
 - a. The Judge has failed to resolve the conflict of fact that Miss Popa is not able to communicate in English, and there is no evidence that the appellant is able to speak Romanian; and
 - b. The Judge has failed to resolve the conflict of fact that after two years of being in the UK, the judge found at paragraph [31] that Miss Popa is unable to communicate in English; and

8. Furthermore, the respondent submits that there is a further conflict of fact identified in paragraph [32] of the decision. The judge found that it was credible that the appellant and Miss Popa would communicate using a mix of languages (namely English and Romanian) given that Miss Popa had now been in the UK for two years and it was reasonable to assume that her ability to communicate in English would improve in time, particularly as the Tribunal was informed that she had not returned to Romania since her arrival in the UK in May 2003. It is therefore unclear whether the Judge proceeded upon the premise that Miss Popa had been in the UK for 2 years or 12 years.
9. Permission to appeal was granted by First-tier Tribunal Judge Holmes who commented that the judge's approach to the disputed issues of fact, is arguably muddled and inconsistent, so that there is a failure to engage adequately with the key issue of whether the sponsor spoke English when the couple met and agreed to marry. First-tier Tribunal Judge Holmes also noted that there is an arguable inconsistency in the approach to the question of how long the sponsor lived in the UK.

DISCUSSION

10. On behalf of the respondent, Ms Isherwood adopted the grounds of appeal and submitted that the decision of the First-tier Tribunal discloses a material error of law capable of affecting the outcome of the decision. She submits that the respondent, in her decision refusing the application for a residence card, had set out the evidential basis upon which she had concluded that the appellant had knowingly entered into a sham marriage. She submitted that contrary to what was submitted on behalf of the appellant and recorded at paragraph [23] of the decision, the respondent had provided the record of the 'marriage interview', and thus satisfied the evidential burden upon the respondent. Ms Isherwood submitted that there was no evidence of a common language and that the Judge failed, in reaching his decision, to address the point made in the respondent's refusal letter, that the appellant and Miss Popa are a couple that cannot communicate with each other in a way that would be reasonably expected, and that it is reasonable to expect someone that is in a genuine relationship would be able to communicate. She also submits that at paragraph [32] the Judge appears to proceed upon the premise that the appellant has been in the United Kingdom since May 2003.
11. On behalf of the appellant, Mr Khan submits that the appellant and Miss Popa were cross-examined at some length during the hearing before the First-tier Tribunal and that the Judge found that they provided consistent and credible answers. He submits that the findings made by the Judge were properly open to him, and that insofar as there is any confusion as to the length of time that Miss Popa has lived in the UK, it is to be noted that at paragraph [17], the Judge records the evidence that Miss Popa arrived in the UK in May 2013. Mr Khan submits that at paragraph [32] the Judge refers to Miss Popa as having "been in the UK for 2 years", and so the reference to 2003 must simply be a typing error.

12. I remind myself that there is a clear line of authority that establishes that the Upper Tribunal should be slow to overturn a case where there was no clear legal error. In **R & ors (Iran) v SSHD [2005] EWCA Civ 982**, the Court of Appeal held that before the Tribunal can set aside a decision of a Judge on the grounds of error of law, it has to be satisfied that the correction of the error would have made a material difference to the outcome, or to the fairness of the proceedings. A finding might only be set aside for error of law on the grounds of perversity if it was irrational or unreasonable in the *Wednesbury* sense, or one that was wholly unsupported by the evidence.
13. I have carefully read through, and considered the findings and reasons that are set out at paragraphs [30] to [33] of the decision of the First-tier Tribunal. I reject the submission made on behalf of the respondent that the judge fails to take into account, or resolve conflicts of fact. As to the way in which the appellant and Miss Popa communicate, the evidence of the appellant was that “his wife speaks a little English and that he is now able to speak lots of Romanian.” [15]. Miss Popa gave evidence “that the appellant is teaching her English and that they also make use of Google to communicate.” [17]. At paragraph [19], the Judge records the evidence given by Miss Popa that “the appellant understands Romanian very well and that she speaks a little English.”. Read carefully, at paragraph [31] the Judge noted the significant difficulty that the appellant and Miss Popa would have in seeking to communicate in English. The Judge went on, at paragraph [31] to find that “the appellant and Miss Popa would not be able to communicate with each other solely in English”. The use of the word “solely” in this context is important, because that was a finding open to the Judge on the evidence. The evidence was not that Miss Popa is not able to communicate in English at all, or that the Appellant is unable to speak Romanian. On the evidence it was plainly open to the judge to find, as he did, that the appellant and Miss Popa would not be able to communicate with each other solely in English.
14. Whilst it is correct that there was no evidence before the Tribunal that the appellant was able to speak a lot of Romanian, at paragraph [32], the Judge accepted as credible, that the appellant and Miss Popa would communicate in a mix of languages (namely English and Romanian). In my judgement, on the evidence available to the Tribunal, that was a conclusion open to the Tribunal that cannot be described as perverse, irrational or unreasonable in the *Wednesbury* sense, or one that was wholly unsupported by the evidence.
15. At paragraph [32], the Judge goes on to set out his reasoning for concluding that it is credible that the appellant and Miss Popa communicate using a mix of languages. The judge records that Miss Popa “had now been in the UK for 2 years”. The hearing took place in May 2015 and so the Judge appears to have had in mind that Miss Popa had been in the UK since May 2013. That is consistent with the evidence recorded at paragraph [17] of the decision. I accept the submission made on behalf of the appellant that the reference in paragraph [32] to Miss Popa not having

returned to Romania since her arrival in the UK in May 2003 is nothing more than a typing error. The Judge plainly had in mind the fact that Miss Popa had arrived in the UK in May 2013.

16. In those circumstances in my view there is no material error of law and the decision of the First-tier Tribunal stands.

Notice of Decision

17. The appeal is dismissed.

18. No anonymity direction has been applied for. The First-tier Tribunal made no such direction and I make no anonymity direction.

Signed

Date

Deputy Upper Tribunal Judge Mandalia

TO THE RESPONDENT
FEE AWARD

I have dismissed the appeal and therefore there can be no fee award.

Signed

Date

Deputy Upper Tribunal Judge Mandalia