



**Upper Tribunal  
(Immigration and Asylum Chamber)**  
IA/29853/2013

Appeal No:

**THE IMMIGRATION ACTS**

**Heard at Field House  
Promulgated  
On 1 September 2014  
2014**

**Determination  
On 15 September**

**Before**

**DEPUTY JUDGE OF THE UPPER TRIBUNAL DIGNEY**

**Between**

**ASIM MUHAMMAD**

Appellant

and

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the respondent: Mr Duffy, Home Office Presenting Officer  
For the appellant: Mr Blundell

**DETERMINATION AND REASONS**

1. The appellant, a citizen of Pakistan, applied for a residence card as confirmation of a right to reside in the United Kingdom on the basis of that he was the spouse of a Czech national who was exercising treaty rights in this country. That application was refused and an appeal against the decision dismissed. The application was refused because the respondent concluded that the marriage in question was a marriage of convenience and the judge who heard the appeal reached the same

conclusion. The respondent also concluded that the spouse was not exercising treaty rights and the judge agreed with her.

2. The grounds of appeal make two points and I will deal with the second one first as that is the one that Mr Blundell dealt with first and on which he placed the greater reliance. This was a case where the judge concluded that the parties may have been in a casual relationship and may even have been living in the same accommodation. The point is best put in Paragraph 11 of the grounds, which states:
3. The judge erred in defining a marriage of convenience as one which does not reflect a genuine, subsisting, long-term relationship. The terminology used indicates that the judge applied the approach applicable under the Immigration Rules. The test in Community Law, however, is whether the marriage has been contracted “for the sole purpose of enjoying the right of free movement or residence”....or that it “has no substance or purpose other than that for which it has avowedly been used”\_ or that it is “ a sham marriage entered into solely for immigration purposes [Emphasis in the grounds].
4. The first ground, which Mr Blundell admits is rather unhappily called “Procedural Impropriety” is based on the fact that the judge drew certain conclusions from the sponsor’s wage slips on the basis of his own experience and did not warn the appellant’s representatives that he was going to do so.
5. Permission to appeal was granted and the only matter referred to was the reasoning relating to a marriage of convenience.
6. There is a rule 24 response which argued that the judge dealt properly with both points raised.
7. At the hearing Mr Blundell produced documentation which justified the definition of a marriage of convenience given in the grounds. He said it is not enough if part of the motivation for the marriage is to obtain an immigration advantage. This was not a case where the parties were nothing to each other and there was a relationship or cohabitation.
8. He accepted that the judge had properly applied the law in other respects but was wrong to conclude that what we have here is a marriage of convenience in the light of his findings about a relationship.
9. The fallacy in Mr Blundell’s argument is that he treats the paradigm of a marriage of convenience as the case where the parties do not speak a word of each other’s language and meet for the first time at the registry office. In reality there will be a continuum, going from that stage to cases where the parties may know each other, be friends, or even be in a relationship. In all these cases it is possible for there to be a marriage of convenience. This is very different from parties choosing to marry where

the immigration result may be a factor in the decision. Here it was open to the judge to decide that this was a marriage of convenience, carried out in one of the ways referred to in the grounds set out in paragraph 2 of this determination. The judge was clearly entitled to reach the conclusion that he did on the evidence and there is no evidence that this is a case where there was a genuine wish to marry and this was encouraged by extraneous immigration advantages. The fact that parties to a marriage of convenience are friends does not stop a marriage of convenience being such if that is the case.

10. It follows that there is no error of law in the judge's conclusion on the marriage of convenience point.
11. In those circumstances it is not necessary for me to consider the point of "Procedural Impropriety".
12. It follows that the original judge made no error of law. The original decision stands.

### **The appeal is dismissed**

Designated Judge Digney  
Judge of the Upper Tribunal  
September 2014

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