



IAC-FH-NL-V1

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

Appeal Number: IA/24731/2014

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 22 July 2015**

**Decision & Reasons Promulgated  
On 23 July 2015**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE CHAPMAN**

**Between**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

v

**Pritpal SINGH  
(NO ANONYMITY DIRECTION MADE)**

Respondent

**Representation:**

For the Appellant: Mr C. Avery, Senior Home Office Presenting Officer  
For the Respondent: Mr P.S. Chodha, Chambers of T.S. Chodha

**ERROR OF LAW & REASONS**

1. The Respondent is a national of India, born on 10 January 1979. It is not entirely clear when he first arrived in the United Kingdom but according to the Secretary of State for the Home Department the Respondent arrived clandestinely on 3 September 2007. On 6 July 2013, he married Anna Maria Lakotas, a Hungarian national, born on 14 February 1993, having met on 26 March 2011 and thereafter commenced a relationship. On 13 November 2013, the Respondent applied for a residence card. This application was rejected on 2 June 2014 as the Secretary of State decided that the marriage was one of convenience entered into for the sole purpose of enabling him to remain in the

United Kingdom. This decision was based on “*a number of inconsistent and conflicting answers given during the marriage interview which took place on 23<sup>rd</sup> April 2014 at the Home Office in Liverpool.*” The refusal letter further asserts that the Respondent and his Sponsor were asked to conduct a language interview in order to establish whether they had a common language by which they could both communicate and this test demonstrated beyond any doubt that they were unable to communicate in any common language.

#### *The hearing before the First Tier Tribunal*

2. The appeal came before First Tier Tribunal Judge Cary for hearing on 13 February 2015. The Respondent, his Sponsor and two further witnesses attended to give evidence. There was no appearance by the Secretary of State nor had she served or made available any record of the interview that had taken place on 23<sup>rd</sup> April 2014. The Judge heard evidence from the Respondent, from Maria Lakatos, his wife and from Mr Piara Singh and Mr Jagjit Singh and he heard submissions from Mr Chodha, who appeared on behalf of the Respondent.

#### *The Judge’s determination*

3. In a determination promulgated on 19 February 2015, the Judge at 36-38 directed himself in respect of the decision of the Upper Tribunal in Papajorgji (EEA Spouse- marriage of convenience) Greece (2012) UKUT 00038 (IAC) and noted that the burden of proof was upon the State and that it was not enough that the Respondent honestly suspects there is a marriage of convenience, the claimant will only be disqualified if it is established that it is. The Judge noted at [39] that he had not been assisted in reaching his decision by the lack of documentation by the Secretary of State, who had failed to include a copy of the interview record in the bundle or even identify in the reasons for refusal letter precisely what the allegedly inconsistent and conflicting answers were and in those circumstances it is difficult to place any reliance on that part of the Respondent’s reasons for refusing the application. The Judge further noted at [40] that he was not assisted by the absence of a presenting officer particularly as the Secretary of State has, at the very least, to establish that there were some grounds for suspecting the marriage was one of convenience. At [41] he held that there is no reason to believe that the parties are not able to communicate at some level in English. The Judge then proceeded to allow the appeal on the basis that it had not been established that the marriage was one of convenience.

#### *Grounds of appeal*

4. The Secretary of State sought permission to appeal on 27 February 2015. The grounds of appeal asserted that the First Tier Tribunal Judge erred materially in law in failing to give reasons or any adequate reasons for findings on material matters *viz* his finding at [41] that the Respondent and his wife were able to communicate in a common language. It was further asserted that this was a perverse or irrational finding as it was not supported by any evidence provided by the Respondent or his spouse.

*Grant of permission to appeal*

5. Permission to appeal was granted by First Tier Tribunal Judge Colyer on 16 April 2015 on the basis that it was arguable that the judge has materially erred in law by failing to give reasons or adequate reasons for his findings on a material matter.

*Hearing before the Upper Tribunal*

6. Mr Avery submitted that there was one ground and one issue which was the Respondent and his wife's ability to communicate with each other. This was also the focus of the refusal decision. The couple were asked to conduct a language interview and show they could communicate but the result of that was unsuccessful. The way in which the Judge dealt with this was extremely unsatisfactory - there had been no attempt to communicate in English in the hearing and the fact that they simply said they communicate in English is clearly inadequate. The Respondent has a poor immigration history. At [46] the Judge acknowledged that it might be a marriage of convenience and the burden was then on the Respondent. The fundamental point and the focus of the decision was the English language and there was nothing before the Judge to show they could speak English. Mr Avery stated that the interview record was not based on discrepancies but on language scenarios as to whether or not the couple could communicate.

7. In response, Mr Chodha said that it was most regrettable there was no Home Office Presenting Officer at the hearing. The Judge was very clear in the determination as to the basis he decided this was a genuine marriage. He had been perfectly well assisted by the evidence of 3 people and the Judge was entitled to find that the marriage was genuine and subsisting. Three of the witnesses attended the wedding and the Sponsor's mother had come to the UK and was quite happy and there was a statement from her. He pointed out that there was no test as to how far or how strong the language should be between a husband and wife and that most couples rely on the language of love and it was clear that the couple are in love. They had met in March 2011 and had been living together for quite a few years. They had answered questions at the interview to their best ability.

8. Mr Avery indicated that he had a summary of the interview with the Respondent and his wife by the interviewing officer but no verbatim record.

9. I reserved my decision.

*Error of law decision*

10. The Respondent made an application for a residence card as the family member of an EEA national exercising treaty rights in the United Kingdom. He and his wife travelled to Liverpool for an interview which I am told was not a question and answer interview but one based on "language scenarios" by which it was intended to test whether or not the Respondent and his wife were

able to communicate with each other in English, as a common language. The Respondent, his wife and two witnesses attended the hearing before the First Tier Tribunal Judge. However, no Presenting Officer was present and no record of the interview which took place on 23<sup>rd</sup> April 2015 was produced to the First Tier Tribunal Judge. The only issue raised by the Secretary of State in the refusal letter was that the marriage was one of convenience based on the contents of that interview. In the absence of any record of this interview before him and in the absence of a Presenting Officer to test the evidence of the witnesses in cross-examination and by way of submissions, the First Tier Tribunal Judge was entitled to find that the Secretary of State had failed to establish that the Respondent's marriage was one of convenience *cf. Papajorgji (EEA Spouse- marriage of convenience) Greece (2012) UKUT 00038 (IAC) at 39*. He was not satisfied, having heard evidence from the parties and the supporting witnesses, that “ *it was more probable than not this is a marriage of convenience*” [*op cit* at 39]. He accepted the evidence that the Respondent and his wife communicated “at some level” in English. In any event, that is not the only test of the genuineness of a marriage. There was evidence before him of cohabitation in the form of a tenancy agreement in joint names, bank statements and utility bills and the fact of the marriage and cohabitation were confirmed by the two witnesses at the hearing and by a statement from the Sponsor's mother, Mrs Maria Kallai.

11. For these reasons, I find that there is no material error of law in the decision of the First Tier Tribunal Judge.

#### *Conclusion*

12. The First Tier Tribunal Judge did not err materially in law and his decision to allow the appeal stands.

Deputy Upper Tribunal Judge Chapman

22 July 2015