



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

Appeal Number: IA/41315/2013

THE IMMIGRATION ACTS

**Heard at Field House
On 26 August 2014**

**Determination
Promulgated
On 2 September 2014**

Before

DEPUTY UPPER TRIBUNAL JUDGE J M LEWIS

Between

MR VISHALKUMAR SURESHBHAJ PATEL

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr S Ell, Counsel instructed by Maxwell Solicitors
For the Respondent: Mr T Wilding, Home Office Presenting Officer

DETERMINATION AND REASONS

The History of the Appeal

1. The Appellant Mr Vishalkumar Sureshbhai Patel is a citizen of India. He appealed against the refusal of the Respondent to grant him a residence

card under Regulation 17 of the Immigration (European Economic Area) Regulations 2006 made on the sole basis that his marriage to an EEA national was a marriage of convenience. His appeal was heard by Judge Whalan sitting at Taylor House on 23 May 2014. Both parties were represented. In a determination promulgated on 12 June 2014 the judge allowed the appeal under the Regulations.

2. The Respondent sought permission to appeal in the following succinct terms:

"1. Failing to take into account and/or resolve conflicts of fact or opinion on material matters

a. It is respectfully submitted that the Immigration Judge has failed to take into account and resolve the conflict of fact or opinion in relation to the appellant's inability to communicate with each other. It is noted that this was raised in the Reasons for Refusal Letter as the main issue for the belief that the Appellant had entered into a marriage of convenience. It is submitted that the Immigration Judge has failed to address this issue at all in their determination.

b. It is respectfully submitted that by failing to address the issue of communication between the appellant and his spouse, the Immigration Judge's findings in respect of the genuine nature of the marriage are flawed. It is respectfully submitted that the Immigration Judge's findings as to why the appellant is in a genuine marriage take into account several peripheral factors (living at the same address and a terminated pregnancy) yet fail to deal with the fundamental issue of a failure to communicate with each other from commencement of their relationship to the present day. It is submitted that the Immigration Judge's failure to put this in the balance with other negative factors (the appellant's history of visa fraud and a failure to attend college whilst on a student visa) has led to inadequate findings in respect of the genuine nature of the marriage. As such it is considered that the Immigration Judge has materially erred in law by failing to address this fundamental issue of the appellant's ability to communicate with his spouse.

Permission to appeal is respectfully sought.

An oral hearing is requested."

3. On 27 June 2014, as subsequently supplemented by procedural directions, Judge Ransley granted permission to appeal in terms which essentially summarised the judicial findings.

4. The Appellant, the Sponsor and another person attended the error of law hearing before me, which took the form of submissions. I have taken these into account, together with the permission application, the Refusal Letter and the Rule 24 response of the Appellant. I reserved my determination.

Determination

5. The essential submission of the Respondent is that in evaluating the positive and negative considerations the judge did not resolve an asserted conflict of evidence about the inability of the Appellant and the Sponsor to communicate with each other and did not take that fundamental issue into account.
6. The Refusal Letter reproduces corresponding sections of the interviews of the Appellant and the Sponsor on a number of matters including the way in which they communicated with each other. It then discusses three issues: asserted inconsistencies between the interviews about how they communicated, the Appellant's immigration history and the Appellant's character since arriving in the UK. From this discussion it concludes that the marriage was one of convenience and rejects the application.
7. The judge heard the evidence of the Appellant (paras 10-12) and of the Sponsor (paras 13-17) and considered their interviews (paras 18-19). He also considered witness statements of six people and documentary evidence.
8. The judge considered the three factors - asserted inconsistencies in the interviews, the Appellant's immigration history and the Appellant's character - in paragraph 32. He found that the evidence justified the Respondent in forming a reasonable suspicion that the marriage was one of convenience. This was based on the transcripts of the interview, which include questions about communication between the parties. He rejected other aspects of the Appellant's evidence and concluded that he was knowingly involved in a fraud:

“Looking at the questions and answers carefully, I conclude that both parties were, broadly speaking, purporting to give the same information, albeit on occasion in slightly different detail. It was the Appellant's insistence in giving his evidence in English, a language in which he is not really very proficient even in 2014, that led inevitably to some apparent confusion.”

He treated the Appellant's evidence with some caution (paragraph 33). He considered the extensive documentary evidence and found that it established on the balance of probabilities that the Appellant and the Sponsor had lived at the same address since their marriage in April 2012 (paragraph 34). Noting some inconsistency in their oral evidence, he

balanced against it the factor of the Sponsor's pregnancy by the Appellant, subsequently terminated, leading to their decision to marry:

"Doing my best to construe this evidence, therefore, and notwithstanding the Appellant's previous involvement in a dishonest or fraudulent attempt to obtain leave to remain and work in the UK, I conclude that their marriage is not one of convenience entered into for the predominant purpose of securing residence rights." (paragraph 35).

He accordingly allowed the appeal.

9. I find that the judge took into account all relevant factors, including the asserted conflict of evidence about the ability of the Appellant and the Sponsor to communicate with each other. He balanced the various considerations, including that one, and reached a conclusion which was properly open to him from the evidence.

10. No error of law is disclosed. The determination is upheld.

Decision

11. The original determination does not contain an error of law, and is upheld.

Signed
September 2014

Dated: 1

Deputy Upper Tribunal Judge J M Lewis