



IAC-AH-DP-V1

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

Appeal Numbers: IA/52529/2013  
IA/52522/2013

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 12 November 2014**

**Determination Promulgated  
On 20 November 2014**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE MONSON**

**Between**

**MRS MIORA CAPRARU (FIRST APPELLANT)  
MR YASIR AMIN KOKAB (SECOND APPELLANT)**

Appellants

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellants: Ebrahim & Co, Solicitors

For the Respondent: Mr P. Armstrong, Specialist Appeals Team

**DETERMINATION AND REASONS**

1. The appellants appeal to the Upper Tribunal from the decision of the First-tier Tribunal dismissing their appeals against the decision by the respondent to refuse to issue them with residence cards as confirmation of their right to reside in the United Kingdom under the 2006 Regulations. The First-tier Tribunal did not make an anonymity direction, and I do not consider that such a direction is required for these proceedings in the Upper Tribunal.

2. The first appellant, Mrs Capraru, is a national of Romania. The second appellant, Mr Kokab, is a national of Pakistan.
3. On 21 November 2013 the respondent gave her reasons for refusing her application made on 12 October 2012 for a registration certificate as confirmation of her right of residence in the United Kingdom as a self-employed individual. At the marriage interview which she had attended with the second appellant she stated that she stopped working, and she no longer intended to continue with her cleaning business. Accordingly, she had not provided satisfactory evidence that she was exercising treaty rights as a self-employed person.
4. On 10 November the respondent gave her reasons for refusing the second appellant's application made on 12 October 2012 for a residence card as confirmation of a right of residence in the United Kingdom as the family member of a Romanian who was exercising her treaty right in the UK. On the basis of the evidence submitted by him in support of his application, and to further assess the application, it was decided to invite him and his wife to attend a marriage interview. The purpose of the interview was to establish further facts about the nature of his relationship with Mrs Capraru, and the validity of the marriage. In view of the fact that inconsistent and conflicting information was provided by him and his wife at the marriage interview in Liverpool on 20 September 2013, had been decided that he had not provided satisfactory evidence to show that his marriage was not one of convenience.

### **The Hearing Before, and the Decision of, the First-tier Tribunal**

5. The appellants appealed against the respective refusal decisions, and their appeals came before Judge Newberry sitting in the First-tier Tribunal at Taylor House on 24 February 2014. Ms Atcha of Ebrahim & Co Solicitors appeared on behalf of the appellants, and Mr Lowton appeared on behalf of the respondent. The record of proceedings shows that Ms Atcha successfully applied for the appeal to be adjourned part-heard. It was accepted by her that the statements of the appellant and the sponsor were "in error". Evidence of the sponsor's employment was to be provided in writing ten days before the resumed hearing date.
6. The matter came back before Judge Newberry on 30 May 2014. The parties had the same representation as before. Although not recorded in the Record of Proceedings, which are blank, it is apparent from the manuscript notes of the judge which are in the file that the appellants relied on a letter dated 29 May 2014 signed by Jason, Restaurant Manager, at Pizza Express in Charlotte Street, London W1. He certified that the first appellant had been employed by Pizza Express, Charlotte Street since 28 May 2014 on a permanent contract as a cleaner/pot wash area team member. It is also apparent from the judge's manuscript notes that Mr Lowton in his closing

submissions said that no reliance should be placed by the judge on this evidence, as it was not verified. Mr Lowton also submitted the evidence showed that the marriage was one of convenience.

7. In his subsequent determination, which was promulgated on 20 August 2014, the judge found that at the date of the determination the first appellant was not exercising treaty rights as a self-employed person, and therefore was not a qualified person for the purposes of paragraph 6 of the Immigration (European Economic Area) Regulations 2006. Accordingly, her appeal was dismissed on that ground.
8. With regard to the second appellant, he found there was no requirement to “enhance the validity of a marriage”. A marriage is either valid at law or not. In this case, the marriage was on its face valid. But as the respondent rightly concluded that his wife had failed to show that she was exercising treaty rights as a self-employed person, the second appellant could not show that he was a family member of a person who was exercising a treaty right as a self-employed person. Accordingly, the second appellant’s appeal fell to be dismissed.

### **The Grant of Permission to Appeal**

9. The appellants applied for permission to appeal to the Upper Tribunal, and on 1 October 2014 First-tier Tribunal Judge TRP Hollingworth granted permission to appeal on the ground that the judge’s reasoning was insufficient in finding that the first appellant was not exercising treaty rights and that the second appellant’s appeal should fail on similar grounds.

### **The Rule 24 Response**

10. On 6 October 2014 Mr Tufan of the Specialist Appeals Team settled a Rule 24 response on behalf of the appellant. The evidence produced at the hearing relating to the exercise of treaty rights was unsatisfactory. The evidence was a contract of employment and a letter from Pizza Express. No evidence of any pay was produced. Reliance was placed on **AG (Germany) [2007] UKAIT 0075** at paragraphs [86] to [90] for the proposition that in failing to provide verifiable documentary evidence, the burden of proof had not been discharged. The contract of employment and letter alone would not be sufficient in other applications where an applicant had to show evidence of income.
11. However, the judge had erred in failing to make a finding as to whether this was a marriage of convenience. The Reasons for Refusal Letter had gone into some detail, in the light of the discrepant answers given at the interview.

### **The Hearing in the Upper Tribunal**

12. At the hearing in the Upper Tribunal, I reviewed the documentary evidence which had been before the First-tier Tribunal, the judge's manuscript notes and the Record of Proceedings. I found that both parties had been deprived of a fair hearing in the First-tier Tribunal, and that the decision should therefore be set aside and remitted to the First-tier Tribunal for a de novo hearing. My reasons for so finding are set out below.

### **Reasons for Finding an Error of Law**

13. There are two egregious errors of law. The first error made by the judge was a failure to address the evidence tendered at the adjourned hearing of the first appellant now exercising treaty rights as a worker. For the reasons given in the Rule 24 response, the judge was not necessarily bound to accept the new evidence. But he needed to address the new evidence in his determination, and to give reasons for either rejecting or accepting the new evidence. The judge wholly failed to engage with the appellants' case by way of appeal, which was that the first appellant was now exercising treaty rights as a worker.
14. With regard to the appeal of the second appellant, the judge wholly failed to engage with the question of whether the marriage between the parties was one of convenience. The issue was not whether the marriage was valid, in the sense that the necessary formalities had not been observed. The issue was whether the marriage had been contracted for the sole or predominant purpose of securing the second appellant's status in the United Kingdom. By failing to engage at all with this issue, the judge deprived the respondent of a fair hearing on a crucial issue.

### **Decision**

The decision of the First-tier Tribunal contained an error of law, such that it must be set aside and remade.

### **Directions**

**This appeal is remitted to the First-tier Tribunal for a de novo hearing at Taylor House before any judge apart from Judge Newberry.**

Signed

Date **12 November 2014**

Deputy Upper Tribunal Judge Monson