



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

Appeal Number: OA/01382/2014

**THE IMMIGRATION ACTS**

**Heard at Field House**

**On 18 August 2014**

**Determination**

**Promulgated**

**On 18 September 2014**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE RIMINGTON**

**Between**

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

Appellant

**and**

**SIDDHARTHA KANJILAL  
(NO Anonymity Direction Made)**

Respondent

**Representation:**

For the Appellant: None

For the Respondent: Mr T Melvin, Home Office Presenting Officer

**DETERMINATION AND REASONS**

**The Appellant**

1. The application for permission to appeal was made by the Secretary of State but nonetheless for the purposes of this appeal I shall describe the parties as they were described before the First-tier Tribunal, that is Mr

Siddhartha Kanjilal as the appellant and the Secretary of State as the respondent.

2. The appellant is an Indian national born on 20 April 1983 and appeals under the Immigration (European Economic Area) Regulations 2006 (the EEA Regulations) and the Nationality, Immigration and Asylum Act 2002 against the decision to refuse the issue of a residence permit under the Regulations.
3. On 26 June 2014 Judge of the First-tier Tribunal Cresswell considered the appeal on the papers and allowed the appeal.
4. An application for permission to appeal was made by the respondent on the following grounds. At paragraph 15(iii) the judge found that the respondent had demonstrated the proper suspicion that the appellant had shown that this was not a marriage of convenience. It was claimed by the respondent that the judge had failed to provide adequate reasons for his findings that the appellant had proved a genuine marriage. At 15(v) the judge found there was considerable evidence of contact between the parties but failed to reason the findings. The judge found the evidence credible but in doing so failed to have regard to the sponsor's failure to attend the hearing and the circumstances at the date of decision rather than the date of hearing.
5. Permission to appeal was granted by First-tier Tribunal Judge Ransley who noted that the judge found that the Entry Clearance Officer had demonstrated proper suspicion but that the judge was "more than a little surprised that the sponsor did not attend an oral hearing and that appellant was content to have a decision taken on the papers". The judge then stated that at 15(v) of the determination there was "considerable evidence" of contact between the parties without identifying the evidence that he accepted. The judge (at 15(vii)) stated: "Either there has been a hugely time consuming, very expensive and documentary generating false exercise here involving much travel by the couple and the involvement of the families or there is a genuine marriage". The judge failed to give adequate reasons why he found the evidence pointed to the latter and not the former. The judge stated that there was arguable error of law.
6. Mr Melvin submitted at the hearing that this was a paper case dealt with by Judge Cresswell with insufficient reasoning. Once again the appellant's sponsor had failed to attend. In these circumstances the evidence had not been tested. Questions would arise from the bank statements and visa and passport which identified visits and this had not been undertaken.
7. It was confirmed that the matter was indeed determined on the papers.

## **Conclusions**

8. **Boodhoo (EEA Regulations - relevant evidence) [2013] UKUT 00346 (IAC)** confirms that Section 85A of the 2002 Act has no application to an appeal under the EEA Regulations.
9. The judge cited and followed **Papajorgji (EEA spouse - marriage of convenience) Greece [2012] UKUT 0038 (IAC)** in that there is no burden at the outset of an application on the claimant to demonstrate that the marriage to an EEA national is not one of convenience, but once that is established that there is an evidential burden on the claimant to address evidence justifying reasonable suspicion that the marriage is entered into for the predominant purpose of securing residence rights.
10. Nowhere in the application for permission to appeal was the ground raised to the effect that the matter should not have been dealt with on the papers and I note from the notice of the hearing that was sent to both the appellant and the Entry Clearance Officer on 24 April 2014, that the matter was to be decided on the papers without a hearing and that “the Tribunal may determine the appeal on the basis of the appeal documents together with any further written evidence or submissions he may wish to make”. Further written evidence was directed to be received by the office by 20 June 2014.
11. It was open to the Entry Clearance Officer to request an oral hearing on the basis that further evidence might be submitted. He did not do so.
12. The Entry Clearance Manager who confirmed the decision identified further evidence and that following the refusal the appellant has “now provided supporting documentation relating to his application in an attempt to show that he has a genuine and subsisting relationship with his sponsor Eldiko”. That documentation consisted of photographs, emails and copies of travel tickets. The appellant claims that he was married to Miss Eldiko Cseriova from Slovakia and who was exercising her EEA rights. Thus the respondent was aware that there was further information and indeed had sight of the further evidence submitted in the form of photographs, emails and copies of travel tickets.
13. The judge states at 15(iii): “I have looked at all of the evidence in the round’ and he records that he placed in the balance all that he recorded in his following subparagraphs. The judge was clear that the respondent had demonstrated suspicion but the appellant had shown that this was not a marriage of convenience. Although the judge registered surprise that the sponsor did not attend an oral hearing (15(iv)) the judge did refer to the substantial body of documentation and noted that the respondent accepted that photographs showed meetings of the parties including at the wedding. The judge identified at 15(iv) that there was evidence of a visit by the sponsor to the UAE in May 2014 and there were further photographs of the couple in various settings. The judge identified at 15(v) “there is considerable evidence now too of contact between the parties”.

14. The judge also refers to the description given by the sponsor's employer of her excitement and planning for the wedding.
15. The judge concludes the findings stating that the evidence points on the balance of probabilities to the fact that there was a genuine marriage. Having already referred to the substantial body of documentation, the photographs, the wedding and the visit and the further photographs of the couple in various settings, and the evidence of the contact between the parties, by implication the emails, the judge found that this supported that the case was made out that this was *not* a hugely time consuming very expensive documentary generating false exercise involving much travel but that it was a genuine marriage. This, I find on careful reading of the determination, was clearly expressed by the judge.
16. A reading of the determination as a whole supports the contention that the judge made reasoned findings and further to **Shizad (sufficiency of reasons: set aside) [2013] UKUT 00085 (IAC)** those findings do not need to be extensive if the decision as a whole makes sense having regard to the material accepted by the judge.
17. I find that the application for permission to appeal was merely a disagreement with the judge's findings and the determination although brief, gives adequate reasons and discloses no error of law and therefore shall stand.

Signed

Date 16<sup>th</sup> September 2014

Deputy Upper Tribunal Judge Rimington