



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

Appeal Numbers: IA459192014
IA459282014

THE IMMIGRATION ACTS

Heard at Bradford Upper Tribunal

On 24th February 2016

**Decision & Reasons
Promulgated
On 9th June 2016**

Before

UPPER TRIBUNAL JUDGE D E TAYLOR

Between

**RANJIT SINGH (FIRST APPELLANT)
LUCIE KOPRIVOVA (SECOND APPELLANT)
(ANONYMITY DIRECTION NOT MADE)**

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: HUMD solicitors

For the Respondent: Mr Diwncyz, HOPO

DECISION AND REASONS

1. This is the appellant's appeal against the decision of the late Judge Upson made following a hearing at Bradford on 18th May 2015.

2. The first appellant was born on 1st May 1984 and is a citizen of India. The second appellant is his wife, born on 27th October 1984 and a national of the Czech Republic.
3. On 13th June 2014 Mr Singh made an application for a residence card as the spouse of an EEA national exercising treaty rights in the UK. He provided evidence that he had married Ms Koprivova on 13th May 2014.
4. On 17th October 2014 a “pastoral visit” was arranged and the appellants were interviewed separately. Reference to those interviews was made in a letter of 20th October 2014, refusing the application on the grounds that the Secretary of State believed that the marriage was one of convenience.
5. On 10th November 2014 Ms Koprivova was served with Form IS.151A informing her of her status under the Immigration (EEA) Regulations 2006 and of her liability to detention and removal. She was informed that it was believed that she had abused her rights under the treaty in seeking to assist Mr Singh in his application and that she was not exercising her treaty rights.
6. The Judge considered the evidence and the submissions. He set out the law in relation to where the burden of proof lies where there is an allegation that the marriage under consideration is one of convenience. He was satisfied that there was sufficient evidence upon which the Secretary of State could suspect the genuineness of the marriage. He considered all of the documentary and oral evidence and concluded that this was not a genuine and subsisting relationship and that the appellants had failed to provide evidence that he could rely on to dispel the suspicion of the decision maker that this was a marriage of convenience.
7. The appellants had submitted that the interviews were not conducted in accordance with the proper procedures as set out in the European Commission Handbook and that the appellants had not been treated fairly. They relied on the decision in Miah (interviewer’s comments: disclosure: fairness) [2014] UKUT 00515 which concluded that fairness requires that the affected person must be alerted to the essential elements of the case against him. In particular the President considered the issue of disclosure and said:

“The document enshrining the interviewer’s comments - Form ICV.4605 - must be disclosed as a matter of course. An appellant’s right to a fair hearing dictates this course. If exceptionally, some legitimate concern about disclosure for example the protection of a third party should arise this should proactively be brought to the attention of the Tribunal for a ruling and directions. In this way the principle of independent judicial adjudication will provide adequate safeguards for the appellant. This will also enable mechanisms such as redaction which in practice one would expect to arise with extreme rarity, to be considered.”

8. The Judge did not accept the argument that the appellant had been treated unfairly and it was on this basis that leave to appeal to the Upper Tribunal was sought.
9. Although permission was initially refused it was granted by Upper Tribunal Judge Finch who said:

“The reasons for refusal letter merely included excerpts from the interviews conducted with the appellants in relation to the allegation that they had entered into a marriage of convenience and on 13th February 2015 the appellants were sent notes of their interviews. However in paragraph 13 of Miah, the President noted that it is stated in the European Commission Handbook relating to marriages of convenience that “Contradictions inconsistencies lack of detail and implausible statements which are relevant for the decision making should be identified and explicitly put to the interviewed spouses.” It is implicit that this should occur within the interviewing process and not merely for the purposes of any subsequent appeal against a decision. He then goes on state in paragraph 13 of his decision and reasons that “The spotlight is firmly on the pre-decision interview and that the interview is the vehicle through which this discreet duty of fairness will be discharged. The interviews disclosed in this case did not indicate that this had been done.”

10. Mr Diwncyz did not seek to argue that proper process had been followed in this case. He did however rely on the point made in the Rule 24 response which was that permission to appeal had not been sought against the finding of the Judge that the EEA national sponsor was not exercising treaty rights in the UK. Accordingly those findings should stand.
11. The documents containing the interviewer’s comments have never been disclosed to the appellant. This is contrary to the decision in Miah and accordingly is not in accordance with the law. The decision will have to be remade by the Secretary of State who will of course have the benefit of the unchallenged findings of the Judge that the second appellant was not exercising treaty rights when she remakes the decision as to whether to issue a residence card.

Decision

The original Judge erred in law and his decision is set aside. It is remade as follows. The appeal is allowed to the extent that it is remitted to the Secretary of State for a fresh decision to be made on the issue of whether the first appellant entered into a marriage of convenience with the second appellant.

No anonymity direction is made.

Deborah Taylor

Signed

Date 8 June 2016

Upper Tribunal Judge Taylor