



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

Appeal Number: IA/04555/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 3rd September 2014**

**Determination
Promulgated
On 11th September 2014**

Before

DEPUTY UPPER TRIBUNAL JUDGE BAIRD

Between

**MR DALJEET SINGH
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Awan - Solicitor of Mayfair Solicitors
For the Respondent: Mr S. Whitwell - Home Office Presenting Officer

DETERMINATION AND REASONS

1. This is an appeal by Daljeet Singh, a citizen of India born 7th September 1990. He appeals against the determination of First-tier Tribunal Judge Walker issued on 17th June 2014 dismissing under the Immigration (EEA) Regulations 2006 (the 2006 Regs) and on human rights grounds his

application for a residence card as confirmation of a right to reside in the UK. The Sponsor is a Polish citizen.

2. On 8th July 2014 First-tier Tribunal Judge Simpson granted permission to appeal. She noted the grounds to be as follows

“(a) That the judge materially erred in law in failing to apply the correct burden of proof i.e. at paragraph 8 where he stated that since this was a case where the Respondent was alleging ‘a marriage of convenience’ and not genuine, the burden lies on the Respondent – see **Papajorgji (EEA spouse - marriage of convenience) Greece [2012] UKUT 38** and

(b) Failed to note that the burden of proof to establish a sham marriage is to a higher standard and rests on the Respondent.”

Judge Simpson continued

“Dealing with 2(a) above, the Judge did apply the correct burden of proof at [34]. Put simply, in **IS (marriages of convenience) Serbia [2008] UKAIT 31** the Tribunal concluded that there was no burden on an applicant in an EU case unless and until the Respondent had raised the issue by evidence. However, if such evidence was produced then it was for the applicant to produce evidence to address those suspicions. Such an approach can be described as one of (i) an evidential burden in the first place on the Respondent and (ii) the onus then shifting to the claimant in the light of the relevant information rather than a formal legal burden. As to 2(b), however, while the judge did refer in [8] to the general standard of proof, he did not indicate that this would be to the higher levels of the balance of probabilities.”

3. Judge Walker noted that the Appellant had attended an interview with his EEA Sponsor, arranged by the Respondent on 17th May 2013 and that the Respondent had noted a significant number of discrepancies, inconsistencies and irregularities in their accounts which resulted in the Appellant’s application being refused on 1st June 2013. At that time the Appellant and the Sponsor were of the same gender and because of that the UK marriage certificate obtained by them had been issued invalidly. The certificate was returned by the Home Office to the Registrar to be destroyed. On 5th August 2013 the Appellant entered into a civil partnership with his EEA Sponsor and then submitted an application for a Residence Card under the 2006 Regs.
4. The Judge noted that in refusing the application the Respondent had relied on the discrepancies in the accounts given at the interview in May 2013. Whilst it was accepted that the Appellant now holds a valid Civil Partnership Certificate the Respondent was still not satisfied that the relationship is genuine due to the findings at the interview. The Secretary of State considered the marriage to be one of convenience.

5. Judge Walker noted that the marriage interview had extended to 132 questions and that the conflicts and inconsistencies between the answers of the Appellant and his partner were numerous and extensive. He sets out some of these questions and answers. He noted that the Appellant speaks some English but his partner has very limited English indeed. She does not speak Hindi and he does not speak Polish. They use Google translate to communicate. Judge Walker went into great detail about several of the discrepancies such as the evidence they gave about their bedroom at home, whether or not there was a garden and whether or not the Appellant had ever given his wife a ring.
6. Mr Whitwell's position was that there was no error in the way Judge Walker had dealt with the burden and standard of proof and indeed that paragraph 34 of the determination had clearly been taken from **Papajorgji (EEA spouse - marriage of convenience) Greece [2012] UKUT 38.**
7. It is clear from paragraph 34 that Judge Walker was aware that the initial burden was on the Respondent who in his view had discharged that burden by reference to the discrepancies in the information given at interview and the conclusions reached from that. He rightly said that subsequent to that the burden of showing that the partnership and relationship are genuine rests with the Appellant.

Judge Walker concluded:

"If their relationship were genuine and they were living together as partners I would not expect this level and amount of discrepancies in their accounts. These discrepancies and conflicts are wholesale. They are so extensive that they show a lack of credibility in the claims of the Appellant and his claimed partner. In all the circumstances I find that this is not a genuine partnership and is one of convenience. The credibility of the Appellant and his Sponsor is further damaged by the fact that they were both prepared to go through a registry office marriage knowing that they were both of the same gender. They have failed to explain at all why they believe they could do this."

He went on

"The inconsistencies in the marriage interview and which have been highlighted in the refusal letter are sufficient to satisfy the initial burden on the Respondent to show that there are doubts about the genuineness of firstly the marriage and then the civil partnership. Subsequently the burden of showing that the civil partnership and the relationship are genuine rests with the Appellant. He has failed to prove this to the required standard".

8. I agree that the Respondent had initially done enough to satisfy the initial burden on her of giving adequate reasons to question the validity of the marriage. The couple knew that the validity had been challenged when

the refusal letter was issued and they had known since their interview in August 2013 that the Respondent did not accept that they were in a genuine relationship. Notwithstanding this it seems that they were unable at the oral hearing to rebut the reasons given by the Secretary of State for refusing the application on the basis of what was said at the interview. I note that the record of proceedings is extensive and thorough. I can find no error of law in the way the burden and standard of proof were dealt with by Judge Walker.

9. Mr Awan appeared to concede that there was no error relative to the burden and standard of proof but proceeded to make submissions that had not been made in the application for permission and in respect of which permission had not been granted. These submissions related to the findings of Judge Walker on credibility, Mr Awan's view being that the Judge had erred in simply adopting the view of the Respondent based on the interview and had not considered the oral evidence. I am under no obligation to deal with this but for completeness would say that having considered the Record of Proceedings and noted that Judge Walker said he had taken account of all the evidence, I find no merit in that submission.
10. I find therefore that the determination of the First-tier Tribunal does not contain an error of law.

DECISION

The appeal is dismissed and the determination of the First-tier Tribunal shall stand.

Signed

Date: 5th September 2014

N A Baird
Deputy Upper Tribunal Judge