



**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: DA/01768/2013**

THE IMMIGRATION ACTS

Heard at Manchester

**On 22nd September, 2014
Given extempore at the hearing
Signed 1st October, 2014**

**Determination
Promulgated
On 3rd October 2014**

Before

Upper Tribunal Judge Chalkley

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MR FAISAL DAWOOD CHAND

Respondent

Representation:

For the Appellant: Mr McVeety, a Senior Home Office Presenting Officer
For the Respondent: Mr Holt, instructed by M A Consultants (London)

DETERMINATION AND REASONS

1. The appellant is a citizen of India who was born on 18th October, 1987 and who entered the United Kingdom with entry clearance as a working holidaymaker valid from 6th November, 2007 until 6th November, 2008. On 12th June, 2009, he was successful in obtaining a certificate of approval to marry a British citizen, but the marriage did not proceed.

Immigration history

2. On 30th October, 2009, he applied for leave to remain as a student, but that leave application was refused on 3rd December, 2009. He made a further application for the same purpose on 6th January, 2010, but that application was also refused on 12th June, 2010, this time with no right of appeal. On 28th September, 2010, he applied for a certificate of approval to marry a Portuguese national, but this was refused on 6th April, 2011. On 27th July, 2011 he was served with notice informing him of his liability for removal as an overstayer and requiring him to report on 11th August, 2011.
3. On 14th October, 2011 his Portuguese spouse submitted an application for an EEA residence permit and the appellant applied for an EEA residence card as her spouse. Both applications were rejected on 27th October, 2011, because the spouse had failed to provide any evidence that she was exercising treaty rights.
4. A further application was made on 28th November, 2011 and these applications were granted on 23rd May, 2012. The respondent was issued with a residence card as the dependant of an EEA national valid until 3rd May, 2017.

The deportation order

5. At Manchester Crown Court on 10th January, 2013, the respondent was convicted of conspiring to do an act to facilitate the commission of a breach of the United Kingdom Immigration Law by a non-EU national and on 6th March, 2013, he was sentenced to fifteen months' imprisonment. He did not appeal.
7. By letter of 27th March, 2013, served on him on 15th April, 2013, the appellant was notified of his liability to deportation. The appellant made a claim to asylum on 15th May, 2013 which he subsequently withdrew on 25th June, 2013. A deportation order was made on 30th July, 2013.

The decision of the First Tier Tribunal

8. The respondent appealed the decision to make a deportation order against him to a panel of the First-tier Tribunal comprising First-tier Tribunal Judge M Davies and Mrs S A Hussain. They allowed the appeal on a determination promulgated on 10th December, 2013, following which appellant applied for permission to appeal against that decision which was granted on 8th January, 2014.

Error of law

9. On 5th March, 2014 I found that the panel of the First-tier Tribunal had erred in law because, given the convictions of the respondent and his wife, it was necessary of the panel to state clearly with cogent reasons why

they had concluded that the marriage between the appellant and his wife was genuine and they failed to do so.

10. The panel referred at paragraph 35 of their determination to evidence which showed that the parties had both formed the intention to live together permanently and they say that that is supported by “extensive evidence from a large number of people confirming” the genuineness of the marriage, but they do not say what that evidence consisted of and nowhere in their determination do they refer to any of the “extensive evidence from a large number of people”. On 5th March, 2014 I set aside the First-tier Tribunal’s determination.
11. The matter came for hearing before me today 22nd September, 2014, when the respondents were represented by Mr Holt instructed by M A Consultants (London) and the appellant was represented by Mr McVeety a Senior Home Office Presenting Officer.
12. Unfortunately Mr McVeety was in some considerable pain having two slipped discs. He was in no position to continue with a hearing. Mr Holt had no objections to the hearing being adjourned in view of the Home Office Presenting Officer’s indisposition.
13. Mr McVeety and Mr Holt both agreed that in the circumstances and given the delay that has already occurred and the likelihood of further delay before the matter can be relisted again before me, the most sensible course would be for this matter to be remitted under paragraph 7 of the Senior President’s Practice Statement to the First-tier Tribunal for hearing before a First-tier Tribunal Judge other than First-tier Tribunal Judge Davies.
5. In the circumstances I have decided that it is appropriate to remit this appeal to the First-tier Tribunal. If it is felt necessary to have a panel hearing then the panel should comprise of a First-tier Tribunal Judge other than M Davies and a lay member other than Mrs S A Hussain otherwise it is simply necessary to list the matter before a judge other than Mr M Davies. The respondent will need a Gujarati interpreter, there will be two witnesses and the matter should be listed for three hours.

Richard Chalkley
Upper Tribunal Judge Chalkley