



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

Appeal Numbers: IA/00194/2013

THE IMMIGRATION ACTS

**Heard at Field House
On 20 May 2014**

**Promulgated on
On 27th June 2014**

Before

**THE HON. LORD BANNATYNE
UPPER TRIBUNAL JUDGE LATTER**

Between

BUNCHUAI CHAMPANGOEN

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr R Sharma, instructed by Sivaramen, Solicitors
For the Respondent: Mr T Melvin, Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant is a citizen of Thailand, born on 1 January 1952 whose appeal against the respondent's decision of 7 December 2012 refusing her further leave to remain as the spouse of her British national husband was dismissed by the First-tier Tribunal in a decision issued on 29 November

2013. Permission to appeal was granted and a hearing before DUTJ Shaerf on 24 February 2014 found that there was an error of law such the decision should be set aside. He gave directions for the re-making of the decision at a resumed hearing.

2. At the hearing before us Mr Melvin indicated that the respondent had had an opportunity to reconsider this appeal and, in the light of the fact that it was now accepted that the relationship was genuine, she sought to withdraw the original decision so that a new decision could be made.
3. Mr Sharma indicated that he was not in a position to agree to this request but he did not seek to make any further submissions.
4. As confirmed in SM (withdrawal of appealed decision: effect) [Pakistan] [2014] UKUT 64, the respondent does not need the Tribunal's consent to withdraw the decision against which there was an appeal to the First-tier Tribunal. However, in such cases the Tribunal does need to re-make the decision notwithstanding the withdrawal of the appealed decision.
5. SM sets out the matters to be taken into account in deciding how the Upper Tribunal should approach that task, as summarised in [4] of the italicised head note. Having taken those factors into account, we are satisfied that we should not consider the substantive merits of the appeal which will be considered by the respondent on the basis that it is accepted that there is a genuine and subsisting marriage. If an adverse decision is reached, the appellant will have a right of appeal. We therefore propose formally to allow this appeal on the basis that the original decision was not in accordance with the law and has been withdrawn by the respondent who will now re-make the decision.

Decision

6. The First-tier Tribunal erred in law for the reasons set out in the Decision and Directions dated 27 February 2014 which has already been served on the parties. The First-tier Tribunal decision was set aside. The appeal is allowed as the original decision was not in accordance with the law and will remain with the respondent to be remade.

Signed

Date

Upper Tribunal Judge Latter

30 May 2014