



Upper Tier Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: IA/17518/2014

**THE IMMIGRATION ACTS**

Heard at Field House  
On 5 June 2015

Decision and Reasons Promulgated  
On 17 June 2015

Before

Deputy Upper Tribunal Judge Pickup

Between

Ilona Vasiljeva-Aftab  
[No anonymity direction made]

Appellant

and

Secretary of State for the Home Department

Respondent

**Representation:**

For the appellant: Ms M Atcha, instructed by Ibrahim & Co  
For the respondent: Ms A Everett, Senior Home Office Presenting Officer

**DETERMINATION AND REASONS**

1. The appellant, Ilona Vasiljeva-Aftab, date of birth 29.7.94, is a citizen of Latvia.
2. This is her appeal against the decision of First-tier Tribunal Judge Anthony promulgated 13.2.15, dismissing her appeal against the decision of the Secretary of State to refuse her application made on 22.8.13 for an EEA Registration Certificate, pursuant to the Immigration (EEA) Regulations 2006. The Judge heard the appeal on 30.1.15.
3. Judge Anthony also heard the linked appeal of Muhammad Asad Aftab, who had applied for an EEA Residence Card on the basis of being the family member (spouse)

of Ms Vasiljeva-Aftab an EEA national exercising Treaty rights in the UK. The judge reached the conclusion that their marriage was not genuine but was one of convenience entered into for the sole purpose of enabling Mr Aftab to remain in the UK and thus not outside the definition of spouse in regulation 2. The protection of the Regulations does not extend to a marriage of convenience.

4. First-tier Tribunal Judge Fisher granted permission to appeal on 15.4.15 in respect of this appellant only. In respect of Mr Aftab, Judge Fisher considered that it was open to the judge on the evidence, including the marriage interview summary, to conclude that the marriage was one of convenience, and thus did not grant permission. Mr Aftab has not renewed his application for permission to appeal and thus I cannot consider his case.
5. However, in simply dismissing the appeal Judge Anthony failed to distinguish between this appellant and Mr Aftab. Whilst Mr Aftab may not be entitled to an EEA Residence Certificate, at §13 of the decision the First-tier Tribunal Judge was satisfied that Ms Vasiljeva-Aftab was exercising Treaty rights in the UK and is a qualified person pursuant to regulation 6. She was, therefore, entitled to the EEA Registration Certificate sought.
6. The matter came before me on 5.6.15 as an appeal in the Upper Tribunal.
7. In the Rule 24 response, dated 23.4.15, the Secretary of State accepts that the decision of the First-tier Tribunal in respect of the appellant granted permission to appeal was in error of law and I am invited to allow her appeal. I do so for the reasons set out above, but only in relation to Ms Vasiljeva-Aftab, adopting the findings of the First-tier Tribunal at §13 of the decision.
8. The findings of the judge that theirs is a marriage of convenience and dismissing the appeal of Mr Aftab must stand.

**Conclusions:**

9. The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law such that the decision should be set aside.

I set aside the decision in respect of Ms Vasiljeva-Aftab.

I re-make the decision in her appeal by allowing it under the Immigration (EEA) Regulations 2006.



**Signed**

**Deputy Upper Tribunal Judge Pickup**

**Anonymity**

I have considered whether any parties require the protection of any anonymity direction. No submissions were made on the issue. The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

Given the circumstances, I make no anonymity order.

**Fee Award**

**Note: this is not part of the determination.**

In the light of my decision, I have considered whether to make a fee award (rule 23A (costs) of the Asylum and Immigration Tribunal (Procedure) Rules 2005 and section 12(4)(a) of the Tribunals, Courts and Enforcement Act 2007).

I have had regard to the Joint Presidential Guidance Note: Fee Awards in Immigration Appeals (December 2011).

I make a whole fee award.

Reasons: The appeal in respect of Ms Vasiljeva-Aftab has been allowed.



**Signed**

**Deputy Upper Tribunal Judge Pickup**