IAC-AH-KRL-V1

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/25227/2014

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 9th March 2015	**On 25th March 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

ALI HUSSNAIN RAZA
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr Ahmad Al Arayn (LR)
For the Respondent: Mr Tony Melvin (HOPO)

DECISION AND REASONS

1. This is an appeal against the determination of First-tier Tribunal Judge Evan Ruth, promulgated on 12th November 2014, following a hearing at Taylor House on 4th November 2014. In the determination, the judge allowed the appeal of Ali Hussnain Raza. The Respondent subsequently applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

The Appellant

2. The Appellant is a male, a citizen of Pakistan, who was born on 17th November 1990. He appealed against the decision of the Respondent to refuse his application for a residence card, as confirmation of his right of residence as the husband of a Lithuanian, namely, Ms Diana Jarmolovskaja. The appeal was set down to be heard as a "paper hearing" with no oral evidence given.

The Judge's Findings

3. The judge held that, given that the issue of a marriage of convenience had been raised in this case, the failure of the Appellant to provide reliable evidence was telling. He held that, "in this case neither the Appellant nor his Sponsor had chosen to attend their hearing and no explanation for their absence has been provided" (paragraph 19). Although there was a witness statement provided about how the Appellant met the Sponsor, the judge held that,

> "The unexplained failure of the Appellant or his representatives to attend the hearing following the refusal of the adjournment request and the fact that his evidence was not able to be tested by cross-examination significantly reduces the weight which I can attach to it" (paragraph 21).

Furthermore, the witness statement itself had no date on it and it was not signed by the Sponsor (paragraph 23). The judge concluded that there was no genuine relationship (paragraph 30). The appeal was dismissed.

Grounds of Application

4. The grounds of application state that two letters were sent dated 3rd November 2014 to the Tribunal by the Appellant's representative. The first of these letters was on 3rd November 2014 to adjourn the application and was received at 15:50pm. The application was considered and refused. The medical evidence relied on did not state that the Appellant was unable to attend the hearing. The second of these letters repeated the adjournment application, but also included submissions made on behalf of the Appellant. This second letter was submitted to the Tribunal on the morning of the hearing. At page 11 of the application, there is a copy of the second letter with a fax note indicating it went to the Tribunal at 11:39am. Judge Ruth recorded in the decision that the Tribunal had been informed in a telephone conversation on the morning of the hearing that a further application for an adjournment was to be made. However, by 12 o'clock midday on 4th November, it had not been received. In these circumstances, Judge Ruth heard the appeal in the Appellant's absence. However, it is clear that a further copy of the second letter was then received by the Tribunal on the date of the hearing at 1:25pm. This copy (with the fax time on it) was subsequently sent to the judge, along with the copy of the first letter, at some point after the hearing. Judge Ruth did not receive the second letter until four days later on 8th November 2014. By then Judge Ruth had signed off his decision. Indeed, Judge Ruth's file indicates a note that by the time of the receipt of the second letter

the decision had been promulgated (although the Tribunal office did not promulgate the decision until 12th November 2014 but this was not known to Judge Ruth).

5. On 23rd January 2015, permission to appeal was granted on the basis that Judge Ruth does not appear to have had the second letter/application to adjourn before him when he made the decision. More importantly, he does not appear to have had the written submissions contained in the second letter before him when he made the decision on the appeal. Accordingly, there was arguably an administrative unfairness because the evidence at page 11 of the application indicates that this second letter to adjourn was sent to the Tribunal before the hearing started at midday.

6. A Rule 24 response was subsequently entered by the Respondent Secretary of State.

Submissions

7. At the hearing before me on 9th March 2015, Mr Melvin, appearing on behalf of the Respondent Secretary of State, submitted that, although this was the Appellant's appeal, he had spoken with the Appellant's representative, Mr Ahmad Al Arayn, and he had decided that the Rule 24 response would be withdrawn, because plainly there was an administrative unfairness to the Appellant, in that his Grounds of Appeal had not been received by the Tribunal judge until four days after they had been sent. In the meantime, the Tribunal judge, Judge Ruth, had made his decision without having regard to the Grounds of Appeal. Second, he submitted that, given that it was still the position of the Appellant's representatives, that neither the Appellant nor his Sponsor, had any intention of attending the hearing, the appropriate course of action was for this matter to be remitted back to the First-tier Tribunal, to be heard by a judge other than Judge Evan Ruth, so that the Grounds of Appeal can be considered in what is a "paper hearing" to enable the judge to reach properly sustainable findings of fact.

8. For his part, Mr Arayn accepted that this was a "paper hearing". He also accepted that the Appellant and the Sponsor had no intention of attending the hearing. He undertook to resend the Grounds of Appeal again to the First-tier Tribunal so that the matter can be reconsidered again in the light of the grounds.

Error of Law

9. I am satisfied that the making of the decision by the judge involved the making of an error on a point of law (see Section 12(1) of TCEA 2007) such that I should set aside the decision. There is clearly an unfairness to the Appellant in a procedural sense in that, in what is a paper hearing, the Grounds of Appeal which he submitted on the day of the hearing, such that they arrived during the morning of the hearing, were not considered when the judge considered the papers in the afternoon. In fact, the Grounds of Appeal were only looked at four days after the date of the hearing, by which time the judge had made his decision. There has been a failure of a proper hearing and this matter should be returned back to the First-tier Tribunal under

practice statement 7.2 to be heard by a judge other than Judge Ruth with the matter to be considered on a de novo basis, with directions given by this Tribunal, as I now do, that the Appellant send the Grounds of Appeal relied upon to the Tribunal (with a copy sent to the Respondent Home Office) by the time of the next hearing before the First-tier Tribunal.

Notice of Decision

10. The decision of the First-tier Tribunal involved the making of an error of law such that it falls to be set aside. I set aside the decision of the original judge. I remake the decision as follows. This appeal is remitted back to the First-tier Tribunal to be reheard by a judge other than Judge Ruth on a de novo basis under practice statement 7.2 with no previous findings preserved. The Appellant is to resend his Grounds of Appeal relied upon.

11. No anonymity order is made.

Signed Dated

Deputy Upper Tribunal Judge Juss 23rd March 2015