



**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/27341/2014**

THE IMMIGRATION ACTS

**Heard at Field House
On 24 August 2015**

**Determination Promulgated
On 26 August 2015**

Before

Deputy Upper Tribunal Judge MANUELL

Between

MR LYES LEFFAD

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr C Jacobs, Counsel (instructed by BMAP)

For the Respondent: Ms A Fijwala, Home Office Presenting Officer

DETERMINATION AND REASONS

1. The Appellant appealed with permission granted on 2 June 2015 by First-tier Tribunal Judge Frankish against the dismissal of his appeal seeking the issue of a residence card under regulation 7 of the Immigration (European Economic Area) Regulations 2006 (as amended) ("the EEA Regulations") by First-tier Tribunal Judge Raymond in a determination promulgated on 2 April 2015. The Appellant is a national of Algeria, born on 31 July 1977. He had denied that his marriage to a Hungarian national was one of convenience.

2. Judge Raymond found that the Appellant's marriage was one of convenience, i.e., was a sham.
3. Permission to appeal was granted by Judge Frankish because he considered it arguable that the judge had reached an incorrect assessment of the evidence, and in particular had failed to take into account the Home Office Presenting Officer's concession at the hearing that there were no material discrepancies in the record of the Home Office interview(s) of the couple.
4. By notice under rule 24 of the Upper Tribunal Procedure Rules, the Respondent (the Secretary of State) indicated that she opposed the application for permission to appeal.
5. Mr Jacobs for the Appellant produced a redacted copy of his email to his instructing solicitors dated 12 November 2014, which recorded the Home Office Presenting Officer's concession. This was particularly relevant because the interview records had not been produced at the hearing. There had been material procedural unfairness amounting to an error of law. The decision and reasons should be set aside and the appeal reheard before another judge.
6. Ms Fijwala for the Respondent (the Secretary of State) relied on the rule 24 notice. There was no note on the Respondent's file recording any concession about the interview record. The findings which the judge reached had been open to him. The determination contained no material error of law.
7. At the conclusion of submissions the tribunal stated it found that there were material errors of law by First-tier Tribunal Judge Raymond in his determination. The tribunal reserved its decision which now follows.
8. The tribunal regrets to note that the experienced judge's determination was promulgated very late indeed. The hearing in Richmond was on 12 November 2014 and yet the determination was not promulgated until 2 April 2015, which is some 5 months afterwards. That is simply not acceptable. The parties can have no confidence that the judge has recalled the facts accurately and exactly that complaint is made in the grounds of onwards appeal. At [131] of his determination the judge noted that there were matters where he might have been willing to extend the Appellant the benefit of the doubt, which indicates that he considered that the appeal was not entirely clear cut. That made accuracy and promptness in the analysis of the evidence of importance.
9. The critical issue, in the tribunal's view, was whether or not there had been a concession about the marriage interview record by the Home Office Presenting Officer at the hearing. Nothing to that effect was mentioned in the determination. The judge's record of proceedings,

so far as it can be read, is silent. It was the case, however, that the Respondent failed to produce the interview(s), which she most certainly ought to have done. The judge quite rightly continued with the hearing, but (having decided to take that approach) ought to have been very cautious in his treatment of discrepancies said to be from that source. Importantly and crucially, Mr Jacobs's contemporaneous note to his instructing solicitors is categorical that there were concessions made by the Home Office Presenting Officer. There is no reason to doubt the accuracy of Mr Jacobs's note. Such concessions would have been the right course in the circumstances. The tribunal accordingly finds that the concessions relied on by the Appellant were made, which the judge had unfortunately forgotten about by the time he analysed the evidence months after the hearing.

10. The tribunal does not intend to suggest that the judge's robust yet careful analysis might otherwise not have been open to him. Many of the points adverse to the Appellant he has made are sound, but the judge seems not to have recalled that the wedding gift jewellery was produced to him at the hearing. Again this undermines the determination.
11. The tribunal concludes that these matters go to procedural fairness. There could have been a different outcome. They amount to material errors of law, such that the determination cannot stand and must be set aside. The onwards appeal succeeds.
12. It was not possible to rehear the appeal as no interpreters were available. The interview records were not available either. These records must be produced by the Respondent when the appeal is reheard.

DECISION

There were material errors of law in the First-tier Tribunal's decision, such that the decision must be set aside.

The appeal must be reheard at the Hatton Cross hearing centre by a judge other than First-tier Tribunal Raymond, on a date to be fixed. Interpreters in Algerian and in Hungarian must be booked for that hearing. The Respondent must produce, at least 14 days prior to the re-hearing, typed copies of any interview records on which she wishes to rely.

Signed

Dated

Deputy Upper Tribunal Judge Manuell