



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

Appeal Number: IA/29481/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 18th May 2015**

**Decision &
Promulgated
On 29th June 2015**

Reasons

Before

DEPUTY UPPER TRIBUNAL JUDGE RIMINGTON

Between

**MR LAZIZ GADAEV
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms A Cooke, Farani Javid Taylor Solicitors
For the Respondent: M J Isherwood, Home Office Presenting Officer

DECISION AND REASONS

The Appellant

1. The appellant is a citizen of Uzbekistan born on 10th September 1988. He made an application for a residence permit as the husband of Roberta Klingaite, a national of Lithuania. That application was refused on 7th July 2014.

2. The appellant first came to the UK as a student in 2007 and extended his leave as a student before being issued with a residence card on 3rd June 2013. He sought a further residence card on 24th April 2014 which was refused and the subject of this appeal.
3. On 6th January 2015 First-tier Tribunal Judge Seelhoff decided the matter on the papers at Richmond Magistrates' Court and dismissed the appeal.
4. He attached no weight to unsigned statements of the appellant and his wife and found that the respondent had provided evidence that gave a basis for questioning the genuine nature of the marriage which had not been rebutted. He added at paragraph 6:

"I further note that the appellant has failed to provide any documents since April 2014 showing him or his wife living at the claimed address which raises questions as to whether they are genuinely together."
5. An application for permission to appeal was made on the basis that the judge could not properly have considered the appellant's case because he did not have all the relevant information.
6. The appeal was originally listed for an oral hearing to be heard on 18th December 2014. The appellant's solicitors wrote to the court on 10th December 2014 requesting that the matter be listed for a paper hearing because the appellant could not attend for medical reasons. The appellant had lost a kidney earlier in 2014 and in December 2014 was suffering from severe pain and was heavily medicated. Further directions were sought from the Tribunal.
7. A letter dated 17th December was delivered to the appellant's solicitors' office on 24th December directing that any further written submissions for the paper hearing be submitted by 18th December 2014. By the time the letter arrived the deadline for submissions of documents had already passed.
8. A bundle of documents had been served in readiness for the oral hearing originally scheduled for 18th December 2014 but in the light of this being changed to a paper consideration it was considered essential that further documents such as the signed witness statements and submissions be filed.
9. A further ground was that the judge had placed too much weight on the document of the respondent dated 11th September 2004 relating to a visit to the property on 31st October 2013. The writer of the respondent's document was not identified and the document itself was unsigned. The document was dated 11th September 2004 which was clearly inaccurate. The judge failed to notice the inaccuracy and there was no indication from the respondent as to how long after the alleged visit the document was written. There was no consideration of the fact that this document was written nearly one year after the alleged visit to the property.

10. It was submitted that it was inconsistent and an error of law to place no weight on the unsigned witness statements but to place full weight on an unsigned incorrectly dated document provided by the Home Office.
11. Further the judge erred in failing to consider the fact that the appellant had been granted an EEA residence card valid between June 2013 and 2018.
12. The judge also failed to properly consider the evidence relating to the appellant's wife's exercise of treaty rights.
13. It was submitted that it was an appropriate case to make an order for reconsideration. Permission to appeal was granted by First-tier Tribunal Judge V P McDade as it was arguable that there had been a degree of unfairness towards the appellant in the circumstances.
14. A Rule 24 response was submitted and the respondent opposed the appellant's appeal on the basis that the refusal was made on 7th July 2014 and the hearing on 7th January 2015. This gave the appellant ample time to produce any documents that he wished to ahead of the hearing.
15. In my conclusions although the Tribunal had set the hearing for 18th December the appellant's representatives had written to the Tribunal on 10th December 2014 and explained the following:

“We write in relation to the above named matter which is set to be heard on 18th December 2014 at Richmond Magistrates' Court.

Our client has informed us that due to medical reasons he is unable to attend the hearing as he is suffering from severe pain and is heavily medicated due to the loss of his kidney earlier this year.

Therefore we kindly ask for this matter to be dealt with as a paper hearing. We feel that the issues in this case are simple and are appropriate to be dealt with on paper. Our client does not want to delay matters any further, therefore we would be grateful if you could change this accordingly **and provide us with directions as to how to proceed** further and when to submit written submissions as well as the refund of the court fee.”(my emphasis)

16. Unfortunately in response to this letter the Tribunal sent out a further notice of directions dated 22nd December 2014 instructing the appellant to send any written evidence and submissions to the Tribunal by 18th December 2014 which is a date which had already passed.
17. **Instructions were also sent by the Tribunal to the respondent to submit further evidence not before 14th January 2014.** Notwithstanding this Judge Seelhoff proceeded to determine the matter on the papers on 2nd January 2015 and his decision was promulgated on 6th January 2015. In other words the Tribunal had issued a deadline and the judge had undertaken a hearing prior to that deadline elapsing. I also note that in his determination the judge made reference to attaching no weight

to the unsigned statements of the appellant and his wife which lends credence to the point that the appellant's representative solicitors made that further evidence should be presented in the form for example of a signed statement.

18. Ms Cooke on behalf of the appellant also made reference to the issue raised in relation to the sponsor exercising treaty rights. She agreed that the Tribunal was entitled to take this into account but the appellant had not been given notice of this and it was not raised in the reasons for refusal letter.
19. I indicated at the hearing that this would now be a live issue.
20. I find that there was an error of law because of the procedural irregularities and that the matter should be remitted to the First-tier Tribunal for hearing.
21. In the circumstances I am not persuaded that the matter can be justly decided on the papers and directed that an oral hearing take place.
22. I have issued a direction that all further evidence should be submitted at least fourteen days prior to the date of any subsequent hearing which should be an oral hearing.

Notice of Decision

The Judge erred materially for the reasons identified. I set aside the decision pursuant to Section 12(2)(a) of the Tribunals Courts and Enforcement Act 2007 (TCE 2007). Bearing in mind the nature and extent of the findings to be made the matter should be remitted to the First-tier Tribunal under section 12(2) (b) (i) of the TCE 2007 and further to 7.2 (b) of the Presidential Practice Statement

No anonymity direction is made.

Signed

Date 26th June 2015

Deputy Upper Tribunal Judge Rimington