



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/29751/2014

THE IMMIGRATION ACTS

Heard at Bennett House, Stoke
On 17th February 2015

Decision & Reasons Promulgated
On 26th March 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE GARRATT

Between

RASHAD MAHMOOD
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr S Khan, Solicitor of SMK Solicitors
For the Respondent: Mr A McVeety, Senior Home Office Presenting Officer

DECISION AND DIRECTIONS

1. On 10th December 2014 Judge of the First-tier Tribunal R A Cox gave permission to the appellant to appeal against the decision of Judge of the First-tier Tribunal Raikes in which she dismissed the appeal against the decision of the respondent to refuse a residence card as the family member of an EEA national applying the provisions of the Immigration (EEA) Regulations 2006. The respondent was not satisfied that the

appellant met the definition of spouse in Regulation 2 as it was considered that the appellant was a party to a marriage of convenience.

2. In granting permission Judge Cox noted that the grounds of application lacked clarity although it was evident that it was contended that the First-tier Judge had failed to give adequate and balanced consideration to the evidence before her and to give adequate reasons for her finding that the marriage was a sham. It was noted that the judge had not been provided with a transcript of the lengthy interviews to which the appellant and his wife were subject but only a summary highlighting the points supporting the respondent's refusal. Taking into consideration the findings of the Upper Tribunal in *Miah (Interview's comments: disclosure: fairness)* [2014] UKUT 00515 (IAC) and the requirement imposed upon the respondent to file and serve a record of interview with the appellant, the decision of the First-tier Judge was arguably unsafe.
3. At the hearing in the Upper Tribunal before me I heard submissions from both representatives after which I reached the conclusion that the decision showed an error on a point of law such that it should be re-made. My reasons for that conclusion follow.

Error on a Point of Law

4. At the hearing Mr Khan drew my attention to a claimed further error in the decision of the First-tier Judge in paragraph 7 in which it was stated that the appellant's leave had been curtailed on 18th December 2013. Mr Khan drew my attention to the curtailment letter from the respondent dated 1st May 2014 which, he submitted, actually curtailed the appellant's leave from 30th June 2014. It was also contended that the appellant had not said that he had met his sponsor in December 2013 as stated in paragraph 8 of the decision. That was because he was sick at that time which was why he had not been attending college because of illness. Mr Khan also confirmed that he relied upon the ground referred to in the permission on the basis that the appellant had not been provided with the interview record. He added that the judge appeared to have ignored the copious evidence of the parties' relationship which was not based on a proxy marriage as the respondent appeared to think, as pointed out in the solicitors' letter at C43 of the appellant's original bundle.
5. Mr McVeety reminded me of the response dated 19 December 2014. He then submitted that the appellant had failed to complete his course as a student and had learned in January 2014 that he had been withdrawn from his studies yet had done nothing about it. The judge's error in relation to the date of curtailment was therefore not material.
6. As to the availability of the interview record, Mr McVeety conceded that this had not been made available but thought that this, too, was not a material error as the judge had given adequate alternative reasons for the conclusion the marriage was one of convenience. He also argued that the judge was not wrong in basing her findings on the summary of the interview as paragraph 23 of the decision made clear.
7. After I had considered the matter for a few moments I announced that I was satisfied that the decision showed an error on a point of law such that it should be re-made. That was because paragraph 23 of the decision makes it clear that the issue of the

absence of an interview record was put before the judge who, nevertheless, continued to determine the appeal without it. The refusal letter merely contained a summary of the inconsistencies to which the respondent wished to draw attention. Bearing in mind the evidence submitted by both appellant and sponsor to support the genuineness of their marriage, the judge's failure to adjourn the hearing for the production of the record, which may well have led to a different conclusion, amounts to an error. I do not, however, consider that the additional points made by Mr Khan about the error over the date of curtailment of leave make that error material because the judge was entitled to consider that the appellant's knowledge of his withdrawal from his studies meant that his leave to remain was at risk.

Notice of Decision

The decision of the First-tier Tribunal contains an error on a point of law such that it should be re-made. Bearing in mind that the error affects the validity of the findings of fact it is appropriate that the appeal should be heard afresh before the First-tier Tribunal.

Anonymity

Anonymity was not requested before the Upper Tribunal nor did I consider it appropriate.

DIRECTIONS

1. The appeal will be heard afresh by the First-tier Tribunal sitting at Stoke Hearing Centre on 27th May 2015.
2. The appeal should not be put before Judge Raikes.
3. Bulgarian and Urdu interpreters will be required for the hearing which is estimated to take two hours.

Signed

Date

Deputy Upper Tribunal Judge Garratt