



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

Appeal Number: IA/47824/2013

THE IMMIGRATION ACTS

**Heard at Field House
On 18 March 2015**

**Determination Promulgated
On 9 April 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE MURRAY

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**AMR MOHAMED NAGIB ABDELGAIL SHARARA
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: Ms Vidyadharan, Home Office Presenting Officer

For the Respondent: No Representative

DETERMINATION AND REASONS

1. The Appellant in these proceedings is the Secretary of State, however, for convenience I shall now refer to the parties as they were before the First-tier Tribunal.
2. The Appellant is a citizen of Egypt, born on 23 March 1988. He appealed against the decision of the Respondent dated 23 October 2013 refusing to issue him with a residence card as confirmation of a right of residence under European Community Law, as the spouse of an EEA National exercising treaty rights in the United Kingdom. The appeal was heard by

Judge of the First-tier Tribunal Phull on 28 October 2014. In her determination promulgated on 16 November 2014 the judge accepted that the appeal had been withdrawn by the respondent.

3. An Application for permission to appeal was lodged and permission was granted by me as a Designated First-tier Tribunal Judge, on 20 January 2015. The grounds of application state that the Judge made a perverse decision to the degree that it is irrational. This is because by a Notice under Rule 17 of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014 the First-tier Judge accepted that the immigration decision taken by the Respondent on 23 October 2013, has been withdrawn and she found that there was no good reason not to treat the decision as withdrawn. (Paragraph 8 of the determination.)
4. The situation is that the Respondent sought to withdraw the immigration decision before the hearing to allow further verification of the Appellant's documents to take place and a fax was sent to the Tribunal to this effect on 23 October 2014. A notice was sent by the Tribunal on 24 October 2014 stating:- "The Senior Judge directs withdrawal to be decided at the hearing, by the Tribunal Judge".
5. The application to withdraw the immigration decision was renewed at the hearing and was refused by Judge of the First-tier Tribunal Phull who indicated that the hearing would proceed and evidence would be taken from the Appellant and his wife. This is recorded in a hearing minute by the Presenting Officer who appeared at the hearing. The Tribunal proceeded with the hearing and took evidence from the Appellant via an interpreter and his EEA National wife. Submissions were made by the Presenting Officer which highlighted significant discrepancies and omissions in the evidence. In the determination the Tribunal does not record the evidence taken or the submissions made. At the conclusion of the hearing the Tribunal reserved its decision. During the hearing the judge made no further mention of the application to withdraw the decision.
6. The grounds submit that by refusing the application to withdraw the immigration decision at the outset of the hearing the Tribunal had effectively estopped itself from treating the decision as withdrawn subsequent to the hearing and that it was procedurally unfair for the Tribunal to treat the decision as withdrawn without giving the Respondent an opportunity to make representations or to allow the application to be withdrawn in light of the evidence taken. The grounds state that having heard the evidence and submissions the Tribunal should have decided the appeal on the evidence presented and the appeal should have been dismissed.
7. The permission reiterates this and states that there may well be a right of appeal in the circumstances of this case, as when the Judge refused to accept the withdrawal of the decision she then raised the hearing to one which was not solely procedural or preliminary.

The Hearing

8. The appellant attended the hearing with his wife. He had no representative. He showed the Presenting Officer and the Tribunal payslips, a P45 and details of his previous job and his current job.
9. I asked the Presenting Officer to enlighten me about the First-tier Tribunal hearing.
10. She submitted that the Secretary of State applied to withdraw her decision so that certain documents could be considered but this application was denied by the Judge and she proceeded to a full hearing, hearing evidence and submissions. She submitted that this is recorded in the minutes of the Presenting Officer who attended the hearing. She submitted that there were discrepancies in the evidence and because of these the Respondent expected the appeal to be dismissed, however, the Judge, having refused the application for withdrawal then decided that the decision had been withdrawn and made no mention of any of the evidence or submissions made at the hearing. She submitted that this must be an error of law.

The Determination

11. The Judge made a clear error of law as he raised the hearing to one which was not solely procedural or preliminary but made no mention of the evidence heard or the submissions made at the hearing, in her determination, instead accepting the withdrawal of the decision.

The Decision

12. I find there to be errors of law in the Judge's determination but in the circumstances of this case I find that the only fair way forward is for me to accept the Respondent's application to withdraw her immigration decision to allow further verification of the Appellant's documents.
13. The First-tier Tribunal's decision therefore stands. Although there is a clear error of law it is not a material error of law.
14. No anonymity direction is made.

Signed

Date **1 April 2015**

Deputy Upper Tribunal Judge Murray
Judge of the Upper Tribunal