**Upper Tribunal**
**(Immigration and Asylum Chamber)** Appeal Number: IA/14838/2015

**THE IMMIGRATION ACTS**

| **Heard at Field House** | **Decision & Reasons Promulgated** |
|---|---|
| **On 13 July 2016** | **On 21 July 2016** |

**Before**

**UPPER TRIBUNAL JUDGE PITT**

**Between**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**and**

**FAUSTINA MANU**
**(ANONYMITY DIRECTION NOT MADE)**

Respondent

**Representation:**

For the Appellant: Mr P Duffy, Home Office Presenting Officer
For the Respondent: No appearance

**DECISION AND REASONS**

1. This is an appeal against the decision of First-tier Tribunal Judge Phull promulgated on 18 January 2016 which allowed the appeal against refusal

of an EEA residence card finding the respondent's decision to be not in accordance with the law.

2. For the purposes of this appeal I refer to the Secretary of State as the respondent and to Ms Manu as the appellant, reflecting their positions before the First-tier Tribunal.

3. Judge Phull found comprehensively against the appellant as regards her claimed relationship with an EEA national. However, at paragraph 31 he stated:

> "The appeal is allowed to the limited extent because it is not in accordance with the law".

4. That statement followed comments at [19]-[21] on how the respondent evidenced her case as regards a visit by Immigration Officers to the appellant's property on 12 March 2015. The comments of the judge are as follows:

> "19. I am placed in difficulty as the respondent has not complied with the court directions and filed a full bundle of documents. The reasons for refusal letter refers to the Immigration Officer's (IO) report following a visit to the appellant's address, [ ] on 12 March 2015. The IO spoke to Joyce Dixon and Baffour Awuah who were present at the address. A copy of IO's report at page C1 respondent's bundle, however it is incomplete. There is another page missing. A contemporaneous record of the conversation/interview the IO had with Joyce and Baffour has not been included in the respondent's bundle. This means that the appellant has not had the opportunity to consider all the evidence the respondent's seeks to rely on.
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> 20. I find the respondent has not complied with the Procedure Rules to file all evidence relied on and has also failed to file a full copy of the Immigration Officer's report including any interview with Joyce and Awuah relied on in the refusal. The respondent is under an obligation to provide the interview record '(**Miah (interview, comments; disclosure, failure) [2014] UKUT 00515 (IAC**)' which held that interview and interviewers comments should be disclosed routinely and therefore the respondent has no right to assert and rely on inconsistencies if the interview has not been disclosed. I find on balance that the decision is not in accordance with the law.
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> 21. I find on balance that the respondent's failure to disclose the IO's full report and any interview record means the appellant does not know the full case against her. I therefore cannot make a just and fair decision without sight of all the evidence the respondent seeks to rely on. I therefore find on balance that the decision is not in accordance with the law."

5. It might be thought that having made that categorical statement as to not being able to make a "just and fair decision without sight of all the evidence" that the matter would end there but Judge Phull made

comprehensive negative findings against the appellant for a number of reasons, set out at [22] to [30].

6. The conclusion at [30] is that the appellant had not shown that she was in a durable relationship with an EEA national. The decision at [30] goes on to state "However as the respondent has not complied with the Procedure Rules relating to the issue of 'marriage of convenience' I find on balance the decision is not in accordance with the law and the appellant awaits a lawful decision".

7. It is not entirely clear to me what is being referred to in this last sentence. There are no Procedure Rules relating to a marriage of convenience. It may be a reference to and to the requirement for the respondent to provide a bundle of evidence on which she relies in an appeal. The respondent did provide a bundle. It may be a reference to the ratio of the case of Papajorgji (EEA spouse – marriage of convenience) Greece [2012] UKUT 00038(IAC) which places an initial evidential burden on the respondent to which the appellant only needs to respond if that evidential burden is shown to be met

8. The only reason for Judge Phull to find that the respondent had not met the evidential burden here, however, is the absence an interview record from the visit to the home on 12 March 2015. It is not my view that this was sufficient to show that the respondent had not made out a prima facie case on the basis of the evidence that she did provide.

9. The First-tier Tribunal's reliance at [20] on the case of **Miah** is also misconceived. The first paragraph of the head note of that case states as follows:

> "(i) A decision that a marriage is a marriage of convenience for the purposes of regulation 2(1) of the Immigration (European Economic Area) Regulations 2006 is a matter of some moment. Fairness requires that the affected person must be alerted to the essential elements of the case against him."

10. Miah requires only that an appellant is given the "essential elements of the case against him". The note from the Immigration Officer meets that requirement, explaining who and what was asked.

11. In any event, it was not merely the interview or the conversation that was had by an Immigration Officer with the residents of the house on 12 March 2015 that led to the refusal. The Secretary of State raised further matters on page 3 of 6 of the refusal letter concerning the address used for the EEA spouse in Leicester and not at the claimed shared home in London and goes on to say that there was insufficient evidence to show a relationship with an EEA national, rather the appellant was still in a relationship with her former partner who was a non-EEA national.

12. It is therefore my view that Judge Phull erred in law in finding that the Secretary of State had not complied with directions or with Procedure

Rules or with the evidential burden placed on her by **Papajorgji**. The appellant knew the case against her, knew that it was to do with residence with her claimed spouse and knew of the other evidential matters relied on against her by the Secretary of State. The error of law is such that the "not in accordance with the law" decision must be set aside to be remade.

13. As is made clear from my consideration of the error of law arguments, I do not accept that the appellant did not know the "essential elements" of the case against her. As above, the Secretary of State put her case clearly in the note of the visit to the home on 12 March 2015 and also set out in the refusal letter the other matters concerning the residence of the claimed spouse on which she relied. The findings of First-tier Tribunal Judge Phull at [22] - [29] on the claim to be in a relationship have not been challenged and admit of only one outcome. This appellant cannot show that she is in a durable relationship with an EEA national. The appeal on the basis of requesting a residence card as being in a durable relationship with an EEA national is refused.

## Decision

14. The determination of the First-tier Tribunal discloses an error on a point of law and is set aside.

15. I remake the appeal as refused.

Signed  Date 20 July 2016

Upper Tribunal Judge Pitt