



**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/35470/2014**

THE IMMIGRATION ACTS

**Heard at Bennett House, Stoke
On 14 January 2016**

**Decision and Reasons
Promulgated
On 22 January 2016**

Before

UPPER TRIBUNAL JUDGE PLIMMER

Between

ABDUL RAJAB

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the appellant: Unrepresented

For the SSHD: Ms Johnstone, Senior Home Office Presenting Officer

DECISION AND DIRECTIONS

1. In a decision dated 20 April 2015 the First-tier Tribunal ('FTT') dismissed the appellant's appeal against a decision to refuse him a residence card on the basis of his marriage to an EEA citizen.
2. The FTT recorded that the appellant did not attend the hearing on 16 April 2015. The appellant and his wife have explained the reasons for this in the grounds of appeal and in their evidence before me and I

set this out in summary. The appellant and his wife attended the Tribunal on 9 January 2015. This was the initial date for the hearing. This had been adjourned by the Tribunal in a notice of hearing dated 7 January 2015. This was not received until after 9 January. Upon receiving the new hearing date (16 April 2015) the appellant wrote to the Tribunal and the Home Office requesting an alternative date and for the hearing to take place in Manchester instead of Newport. The letter to the Tribunal was returned to the appellant by post. The appellant spoke to someone in the Home Office who confirmed that the letter to the Home Office had been received and there was nothing more to do. The appellant misunderstood the meaning of this and did not appreciate that this was meant in relation to the Home Office and not the Tribunal. In his evidence before me the appellant accepted he was wrong but explained that he was not represented and did not understand the process. He was apologetic for not attending the hearing.

3. Ms Johnstone asked me to find that there was no procedural unfairness because the appellant had not established that the Tribunal letter had been returned to him. I must decide whether there was unfairness in all the circumstances, not simply whether the FTT acted reasonably - see Nwaigwe (adjournment: fairness) [2014] UKUT 418 (IAC).
4. I am satisfied that the appellant has been deprived of a fair hearing and that this can be explained by a credible misunderstanding of the process rather than a deliberate decision not to attend the hearing. I accept that the appellant and his wife have demonstrated a willingness to attend the Tribunal - they attended the Tribunal in January 2015 (but that hearing had been adjourned) and the hearing before me. They have provided a copy of a letter in which they make it clear that they wish to attend the hearing but request an alternative date and venue. The reason for not attending the FTT hearing is entirely predicated upon a misunderstanding of the process. This has caused the appellant unfairness as he has been deprived of an opportunity to demonstrate by his attendance at a hearing together with his wife and through oral evidence that their marriage is a genuine one. This unfairness has infected the FTT decision such that it can be said to contain a material error of law.

Decision

5. The decision of the First-tier Tribunal involved the making of a material error of law. Its decision cannot stand and is set aside.
6. The appeal shall be remade by First-tier Tribunal *de novo*.

Directions

- (1) The appeal shall be reheard *de novo* by the First-tier Tribunal sitting in Stoke (TE: 2 hrs) on the first date available.

- (2) Arabic and German interpreters necessary.
- (3) The appellant shall provide the Tribunal and the Home Office with all relevant documentary evidence 14 days before the hearing.

Signed:

Ms M. Plimmer
Judge of the Upper Tribunal

Date:
14 January 2016