



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

Appeal Number: IA/31207/2015

**THE IMMIGRATION ACTS**

**Heard at Field House**

**On 24 October 2017**

**Decision & Reasons  
Promulgated**

**On 6 November 2017**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE G A BLACK**

**Between**

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

Appellant

**and**

**MR OLISAEMEKA ODUME  
(ANONYMITY DIRECTION NOT MADE)**

Claimant

**Representation:**

For the Appellant: Mr E Tufan (Home office presenting officer)

For the Claimant: Mr C Alara (Legal Representative)

**DECISION AND REASONS**

1. This is an appeal by the Secretary of State in respect of a decision and reasons by First-tier Tribunal Judge Majid (FTJ) promulgated on 5 October 2016 in which he allowed the Claimant's appeal against the Secretary of State's refusal to grant a residence card as the spouse of an EEA national exercising treaty rights in the United Kingdom.
2. The grounds of appeal assert that the FTJ erred in refusing an application made by the Claimant's representative (and supported by the Presenting Officer) for an adjournment. The Claimant's representative produced

evidence from the Claimant's wife on the day of the hearing. The evidence related to the alleged cohabitation between the Claimant and his EU wife. The wife was unable to attend on the day of the hearing. A letter from the wife's alleged employer stated that she was not able to take time off work. It was the Secretary of State's case that this was a sham marriage. The grounds argued that the FTJ erred by not granting the adjournment.

3. In the decision the FTJ [4] indicated his understanding that the Claimant's wife was unwell and therefore unable to attend for the hearing. The FTJ took the view that he could rely on the wife's witness statement in which she stated that the parties married in 2013 and had since lived together. The grounds argued that the refusal of the adjournment effectively prevented the Secretary of State from checking the details provided and from cross-examining the EU national wife. Furthermore it was argued that the FTJ reached a decision prior to the hearing based on the contents of the wife's statement and in effect this amounted to a pre-judgment and acceptance of the facts in the absence of any cross-examination.
4. Permission to appeal was granted by Designated Judge of the First-tier Tribunal McClure on 19 May 2017.
5. I heard no detailed submissions as both representatives conceded that the grounds of appeal were made out and that there were material errors of law in the decision which could not stand.

### **Decision**

6. I find material errors of law in the decision which is set aside. The grounds of appeal are made out. The FTJ erred in failing to grant an adjournment and by accepting the contents of a witness statement thus preventing the Secretary of State from challenging the evidence. The matter is remitted for rehearing at Taylor House (excluding Judge Majid).

No anonymity direction is made.

Signed

Date 3.11.2017

GA Black  
Deputy Upper Tribunal Judge G A Black

**TO THE RESPONDENT**  
**FEE AWARD**

As I have allowed the appeal and because a fee has been paid or is payable, I have considered making a fee award and have decided to make no fee award.

Signed

Date 3.11.2017

GA Black  
Deputy Upper Tribunal Judge G A Black