Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: EA/01045/2016**

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 12 April 2018	**On 18 April 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE PEART

Between

MR ZUBAIR ZAHID
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Tinsley, Counsel
For the Respondent: Mr Tufan, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Pakistan. He was born on 22 September 1991.

2. He appealed against the respondent's refusal to issue him with a residence card dated 15 January 2016. It was claimed the marriage was one of convenience.

3. In a decision promulgated on 30 May 2017 Judge Widdup (the judge) dismissed the appellant's appeal because he found the appellant married the sponsor to improve his immigration status. Notwithstanding that it was accepted the appellant and the sponsor were friends, the judge found

the appellant had not shown he was in a subsisting relationship akin to marriage with the sponsor.

4. The grounds claim the judge made findings without giving adequate details or full reasons. Further, that the findings were speculative and not based on the evidence given by the appellant and his spouse.

5. The grounds claim there was no reference either to **Papajorgi** or **Rosa** in terms of the burden of proof.

6. Judge Andrew in a decision dated 11 December 2017 found no arguable error of law. She said at [2]:

> *"The grounds complain there is no reference to either **Papajorgi** or **Rosa**. However, it is apparent from paragraph 31 of the decision the judge had these cases in mind when coming to his decision. They go on to complain as to the judge's findings. It is, however, apparent, the judge has considered his findings carefully, based on the evidence before him and then made sustainable findings. He has given adequate reasons for arriving at those findings."*

7. Judge McGeachy granted permission to appeal in a decision dated 12 February 2018. He considered that, particularly given that the appellant is the father of the sponsor's child that the judge might have erred in concluding that the respondent had discharged the burden of proof in showing that this was a marriage of convenience.

Submissions on Error of Law

8. Mr Tinsley relied upon the grounds. Mr Tinsley acknowledged the documentation before the judge as prepared by the appellant's then solicitors was inadequate, as were some of the grounds. Nevertheless, the judge erred in failing to give adequate weight to the fact that the appellant and the sponsor had a child between them.

9. Mr Tufan submitted that all the judge could do was to take account of the evidence that was before him and comment on the absence of evidence he would have expected to see. DNA evidence was handed up at the hearing which Mr Tufan intimated was not necessarily conclusive as to the appellant's parentage of the child.

Conclusion on Error of Law

10. The judge was placed in a difficult situation. It is unfortunate that there was no Presenting Officer at the hearing. The preparation of the appeal in terms of the documents submitted was inadequate.

11. What appears to be a one-page photocopy of a DNA profiling test report was handed up at the hearing. It seems without more, the judge accepted the same although a Presenting Officer might well have raised issues. Clearly the parentage of the child was a significant concern. Given the judge found the appellant was the father of the child, he erred in his

subsequent analysis because he failed to make adequate findings as to why it was that given the parentage of the child, there was no genuine subsisting relationship akin to marriage although he found there was a friendship between the appellant and the sponsor.

12. In my view, an error of law has been established. No findings will stand. The appeal will be remitted for re-hearing de novo so that fresh documentation can be submitted, the respondent can consider the DNA profiling test report in advance of the hearing and the sponsor and the appellant can be subjected to cross-examination.

Notice of Decision

13. I find the judge materially erred in law for the reasons I have set out above. The decision is set aside in its entirety and shall be remade in the First-tier Tribunal after a de novo hearing.

Anonymity direction not made.

Signed Date 12 April 2018

Deputy Upper Tribunal Judge Peart