



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: EA/02174/2017

**THE IMMIGRATION ACTS**

Heard at Field House  
On 2<sup>nd</sup> July 2018

Decision & Reasons Promulgated  
On 10<sup>th</sup> August 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE RENTON

Between

AMARILDO ISUFAJ  
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Miss H Masood, Counsel instructed by OTS Solicitors  
For the Respondent: Ms K Pal, Home Office Presenting Officer

**DECISION AND REASONS**

**Introduction**

1. The Appellant is a male citizen of Albania born on 21<sup>st</sup> February 1993. Having unsuccessfully applied for asylum during a previous visit to the UK, the Appellant arrived at Luton Airport with his wife on 4<sup>th</sup> February 2017 and sought entry clearance as the spouse of an EEA national under the provisions of Regulation 11 of

the Immigration (European Economic Area) Regulations 2006. The Appellant's wife is a citizen of Lithuania. The Appellant was denied entry clearance for the reasons ultimately given in a Reasons to Refuse Letter dated 4<sup>th</sup> October 2016. The Appellant appealed and his appeal was heard by First-tier Tribunal Judge Brewer (the Judge) sitting at Taylor House on 3<sup>rd</sup> November 2017. He decided to dismiss the appeal for the reasons given in his Decision dated 21<sup>st</sup> November 2017. The Appellant sought leave to appeal that decision.

### **Error of Law**

2. My initial task is to decide if the decision of the Judge contained a material error of law so that it should be set aside. However, I must first decide if there is a valid appeal before me. The difficulty is that the grant of leave of appeal made by Judge of the First-tier Tribunal Grimmett dated 26<sup>th</sup> April 2018 is contradictory. In the first paragraph it states that the application for leave to appeal was made out of time and goes on to say "There was no explanation for the delay in making the application and I do not extend time". In the second paragraph of the grant however leave to appeal is granted on the basis that there was an arguable error of law revealed by the grounds of application.
3. At the hearing before me, I raised the issue of validity with the two representatives who both addressed me briefly on the subject.
4. My decision is that there is no valid appeal before me. Although Judge Grimmett eventually granted leave to appeal, her first decision was that the application for leave to appeal was made out of time and that there was no reason for her to extend time. This is the first decision in the grant and therefore in my view takes precedence. What the Judge subsequently decided in paragraph 2 of the grant is therefore irrelevant. I took the view that it was not for me to overturn in some way the decision of Judge Grimmett not to extend time. I decided not to consider a possible review under Rules 34 and 35 of the Tribunal Procedure Rules 2014 as there would be no compliance with Rule 35(3). I found it significant that Judge Grimmett had not decided to review the decision in the appeal under the provisions of Rule 34.

### **Notice of Decision**

There is no valid appeal before me against the decision of the First-tier Tribunal which is therefore not set aside.

### **Anonymity**

The First-tier Tribunal did not make an order for anonymity. I was not asked to do so and indeed find no reason to do so.

Signed

Date 6<sup>th</sup> August 2018

Deputy Upper Tribunal Judge Renton