



**Upper Tribunal
(Immigration and Asylum Chamber)
EA/03292/2015**

Appeal Number:

THE IMMIGRATION ACTS

Heard at Field House

On January 3, 2018

**Decision & Reasons
Promulgated**

On January 4, 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE ALIS

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**MR BUBACARR DRAMMEH
(NO ANONYMITY DIRECTION MADE)**

Respondent

Representation:

For the Appellant: Mr Tufan, Senior Home Office Presenting Officer
For the Respondent: Ms Baddevithana (Solicitor)

DECISION AND REASONS

1. I do not make an anonymity direction.
2. The respondent in these proceedings was the appellant before the First-tier Tribunal. From hereon I have referred to the parties as they were in the First-tier Tribunal so that, for example, reference to the respondent is a reference to the Secretary of State for the Home Department.
3. The appellant is a Gambian national. The appellant applied for a residence card as the spouse of an EEA national under Regulation 17 of the

Immigration (European Economic Area) 2006. The respondent refused this application on November 27, 2015.

4. The appellant lodged grounds of appeal on December 4, 2015 under Regulation 26 of the 2006 Regulations and Section 82(1) of the Nationality, Immigration and Asylum Act 2002. His appeal came before Judge of the First-tier Tribunal Callow (hereinafter called "the Judge") on February 16 and March 27, 2017 and in a decision promulgated on April 26, 2017 the Judge allowed the appellant's appeal.
5. The respondent appealed the decision on May 9, 2017. Permission to appeal was granted by Judge of the First-tier Tribunal Grant-Hutchinson on November 9, 2017. In giving permission, she found it arguable the Judge may have erred by not providing reasons for concluding the marriage was genuine and subsisting.
6. The matter came before me on the above date and the parties were represented as set out above.

SUBMISSIONS

7. Mr Tufan adopted the grounds of appeal and the grant of permission made in this case. In short, he submitted the Judge gave no reasons for finding the marriage was genuine and subsisting and it was incumbent on the Judge to explain to the losing party why he or she had lost. By failing to give reasons the Judge had erred in law.
8. Ms Baddevithana opposed the application and whilst she accepted there were some shortcomings in the decision and no specific findings she argued the Judge had set out evidence in [6] and [9] of his decision and the finding at [10] was open to him.

FINDINGS ON THE ERROR IN LAW

9. The appellant had applied for a residence card. There was evidence that he had entered the United Kingdom using false documents which included evidence that he was previously married. The Judge initially adjourned the hearing and resumed the case a few weeks later at which stage further evidence had been adduced.
10. The Judge analysed this evidence and concluded the appellant had not previously married and therefore was free to marry the appellant.
11. However, being free to marry someone does not make the marriage genuine or subsisting and in making his finding at [10] of the decision the Judge was required to explain his conclusion. Simply, stating that on balance he was satisfied the marriage was genuine and subsisting did not explain why he reached that conclusion.
12. I raised with the parties whether this case could be concluded today but as evidence was required an interpreter was going to be necessary for the EEA national. I then clarified whether this case should be dealt with in this

jurisdiction or remitted back to the First-tier for a fresh hearing. As there had been no findings at all and there was an additional issue relating to the obtaining of the marriage certificate I agreed to remit the matter back to the First-tier for a de novo on these issues.

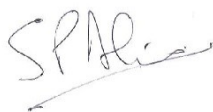
13. It seems the issue surrounding the appellant's entry to the United Kingdom and previous marriage has been considered by the Judge at [10] of his decision and the respondent did not challenge that aspect of the decision. Accordingly, the finding that he had not been married before should be the starting point for any future Tribunal.
14. The First-tier Tribunal will be concerned with Regulation 2 of the 2006 Regulations albeit the EEA national would also have to demonstrate she is currently exercising treaty rights.

DECISION

15. The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law. I set aside the decision. I remit the decision to the First-tier Tribunal to be heard by a Judge other than Judge of the First-tier Tribunal Callow.

Signed

Date 03/01/2018



Deputy Upper Tribunal Judge Alis