



**Upper Tribunal
(Immigration and Asylum Chamber)
EA/09092/2016**

Appeal Number:

THE IMMIGRATION ACTS

Heard at Glasgow

**Decision & Reasons
Promulgated**

On 14 February 2018

On 22 February 2018

Before

**Mr C M G OCKELTON, VICE PRESIDENT
UPPER TRIBUNAL JUDGE MACLEMAN**

Between

Md ADEEL

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr S Winter, Advocate, instructed by Anderson Rizwan, Solicitors

For the Respondent: Mr M Matthews, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant appeals against a decision by FtT Judge M R Oliver, promulgated on 18 January 2017, dismissing his appeal against refusal of a residence card as the husband of an EEA citizen. His grounds are that the judge erred by reversing the burden of proof, and that it was for the respondent to establish that the marriage was one of convenience.
2. The authorities which the appellant cites are in his favour, and he now has the further *imprimatur* of *Sadovska v SSHD* [2017] UKSC 54.

3. The judge also went wrong by holding that an application for a residence card cannot succeed where the applicant was in the UK before the EEA spouse.
4. There are therefore two errors of law in the FtT decision, such that it cannot stand.
5. The respondent's decision leading to these proceedings is based on alleged discrepancies arising from interviews of the appellant and his sponsor on 12 May 2016, the day before they married. However, the decision does not say what the discrepancies are.
6. Mr Matthews could not identify any discrepancies to support the case for the respondent or point to any other materials before the FtT by which the respondent might discharge the burden upon her.
7. There is no basis on which we might remit to the FtT for a fresh hearing.
8. We remake the decision by finding that the respondent has failed to discharge the onus of showing the marriage to be one of convenience, and that the appellant is entitled to a residence card as a spouse.
9. The decision of the First-tier Tribunal is **set aside**, and the following decision is substituted: the appeal, as brought to the FtT, is **allowed**.
10. No anonymity direction has been requested or made.



14 February 2018
Upper Tribunal Judge Macleman