



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: EA/11711/2016

**THE IMMIGRATION ACTS**

Heard at Field House  
On 7 September 2018

Decision & Reasons Promulgated  
On 17 September 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE PEART

Between

MR MD MAINUL ISLAM  
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Mr Slatter of Counsel

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

**DECISION AND REASONS**

1. The appellant was born on 20 June 1989. He is a citizen of Bangladesh. He appealed against the respondent's decision dated 14 September 2016 to refuse his application for a residence card as confirmation of a right of residence as the spouse of an EEA national exercising treaty rights here. The respondent refused the application on the grounds that the appellant entered into a marriage of convenience and that the appellant's EEA sponsor had not provided evidence to show that she was exercising treaty rights.
2. The appellant's appeal against the respondent's refusal was dismissed by Judge M A Khan (the judge) in a decision promulgated on 4 April 2018.

3. The grounds claim the judge arguably erred in finding that the appellant had entered into a marriage of convenience, the judge having accepted that the appellant's wife had been exercising treaty rights:
4. Ground 1 – the judge erred in finding that the burden of proof was on the appellant to show that he was not in a marriage of convenience.
5. Ground 2 – the judge erred in making inconsistent findings.
6. Ground 3 – the judge failed to direct himself in accordance with **Sadovska [2017] WLR 2926**.
7. Judge Grant-Hutchison granted permission to appeal on 26 July 2018. She said *inter alia*:

*“Although the judge did consider the correct burden of proof in that the legal burden is on the respondent throughout but the evidential burden can shift to the appellant, it is arguable that the judge has erred in law making contradictory findings. At paragraph 48 of the decision and reasons the judge finds that the parties are in a genuine and subsisting relationship but makes contradictory findings at paragraphs 49 to 51 in that the parties' marriage is one of convenience under Regulation 2 of the EEA Regulations 2006”.*

#### **Submissions on Error of Law**

8. Mr Slatter relied upon the grounds.
9. Mr Tufan did not seek to argue that there was no error of law.

#### **Conclusion on Error of Law**

10. The decision is contradictory. See in particular [48]. Mr Tufan suggested and I find that the judge has unfortunately cut and pasted from another decision such that this decision makes no sense.
11. The decision is set aside and will be remade in the First-tier Tribunal following a *de novo* hearing. Given the contradictions, I find that the assessment of credibility should be remade and will require significant fact-finding. Having regard to [7.2](b) of the practice statements for the Immigration and Asylum Chambers of the First-tier Tribunal and the Upper Tribunal, I find this is an appeal which is appropriate to remit to the First-tier Tribunal to be heard *de novo* by a judge other than Judge M A Khan.

No anonymity direction is made.

Signed

Date 7 September 2018

Deputy Upper Tribunal Judge Peart