



**Upper Tribunal  
(Immigration and Asylum Chamber)  
Number: IA/06804/2014**

**Appeal**

**THE IMMIGRATION ACTS**

**Heard at Field House, London**

**Determination**

**On 7 January 2015**

**Promulgated**

**On 7 January 2015**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE GRIMES**

**Between**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**and**

**NAVEED ABID**

Respondent

**Representation:**

For the appellant: Mr C Avery, Home Office Presenting Officer

For the respondent: Mr Z Nasim, instructed by M-R Solicitors

**DETERMINATION AND REASONS**

1. Whilst this is an appeal by the Secretary of State for the Home Department, for convenience I will refer to the parties in the determination as they appeared before the First-tier Tribunal.

2. The appellant, a national of Pakistan, appealed to the First-tier Tribunal against a decision made by the Secretary of State to refuse his application for a residence card as confirmation of a right to reside in the UK with his EEA national spouse in accordance with the Immigration

(EEA) Regulations 2006 (the EEA Regulations). The respondent refused the application on the basis that she believed that the marriage was one of convenience entered into for the sole purpose of him remaining in the UK and because it was not accepted that the appellant's spouse was exercising treaty rights in the UK. The appellant's appeal against this decision was allowed by First-tier Tribunal Majid under the EEA Regulations and under the European Convention on Human Rights. The Secretary of State now appeals with permission to this Tribunal.

3. The grounds of appeal contend that the First-tier Tribunal Judge erred in failing to deal with the credibility issues arising from cross-examination and in failing to give adequate reasons for the decision to allow the appeal under the EEA Regulations. The respondent submitted the presenting officer's minute of the hearing and contends that the issues arising from cross-examination of the appellant and his wife were not adequately addressed by the Judge. It is also contended that the Judge's consideration of Article 8 of the ECHR is meaningless.

4. Permission to appeal to the Upper Tribunal was granted on the basis that it is arguable that the Judge has given inadequate reasons for his findings that the appellant's marriage is genuine.

5. Mr Nasim submitted that the First-tier Tribunal Judge's determination shows that he looked at all of the evidence and that he had the evidence in mind when he reached his findings. He submitted that any inconsistencies between the evidence of the appellant and his wife were minor.

#### Error of law

6. The Judge set out some of the oral evidence adduced before him in the determination. He rightly says at paragraph 7 that he does not need to set out all of the evidence nor, as he says in paragraph 9, does he need to isolate every piece of evidence. However he does need to say what parts of the evidence he accepts or does not accept and to give adequate reasons for his decision. Although he sets out the submission made by the presenting officer in relation to the credibility issues arising from cross-examination [11] he does not make any findings in relation to those issues.

7. In the determination the Judge only made a few actual findings or observations about the evidence. At paragraph 14 he said; *'Accordingly, in response to my questions, the Portuguese wife did not leave me in any doubt that she was genuinely married'*. At paragraph 19 he said; *'I am willing to allow this appeal because I am convinced that the marriage is genuine...'*. He went on to say; *'Both spouses corroborated the fact that they were living together under the same roof before the marriage and had travelled from the same tenement in the car of the appellant's brother who confirmed that fact in his oral evidence'* [19].

8. I am not satisfied that these three sentences disclose adequate reasons for finding that this is not a 'marriage of convenience' as asserted by the Secretary of State.

9. I therefore set the decision of the First-tier Tribunal aside. As the First-tier Tribunal Judge made no adequate findings of fact I set the decision aside in its entirety.

10. Mr Nasim submitted that, in the interests of fairness, the appeal should be remitted to the First-tier Tribunal for a fresh hearing. Mr Avery accepted that the case came within the Practice Direction and did not object to the case being remitted.

11. I am satisfied that the appellant has not therefore had his case properly considered by the First-tier Tribunal. The parties were in agreement with my view that the nature and extent of the judicial fact finding which is necessary in order for the decision to be remade is such that (having regard to the overriding objective in Rule 2 of the Upper Tribunal Procedure Rules 2008) it is appropriate to remit the case to the First-tier Tribunal.

#### Decision

The Judge made an error on a point of law and the determination of the First-tier Tribunal is set aside.

The appeal is remitted to the First-tier Tribunal to be remade.

Signed  
2015

Date: 7 January

A Grimes  
**Deputy Upper Tribunal Judge**

