



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: IA/17236/2014

THE IMMIGRATION ACTS

Heard at Field House

Decision and Reasons

On 8 December 2015

Promulgated

On 22 December 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE MONSON

Between

MRS MARIVIC DE MESA
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M. Sowerby, Counsel instructed by direct access
For the Respondent: Ms J. Isherwood, Specialist Appeals Team

DECISION AND REASONS

1. The appellant appeals to the Upper Tribunal ("UT") from the decision of the First-tier Tribunal (Judge Youngerwood sitting at Taylor House on 17 March 2015) dismissing her appeal against the decision by the SSHD to refuse to issue her with a residence card as confirmation of her right to reside in the United Kingdom as the spouse of an EEA national exercising treaty rights here. The ground of refusal, and the ground on which the appeal was dismissed, was that the appellant had failed to provide sufficient evidence that her husband was currently economically active in the UK as a self-employed person. The First-tier Tribunal ("FTT") did not make an anonymity order, and I do not consider that such an order is warranted for these proceedings in the Upper Tribunal.

The Decision of the First-tier Tribunal

2. One of the reasons given by the judge for dismissing the appeal was that the appellant and the sponsor had not, “for whatever reason”, attended the hearing to be questioned about their case, and, in particular, the change of work status of the sponsor from employed to self-employed. The appellant clearly knew the date of the hearing and had not, “on the evidence before me”, submitted any evidence as to her inability to attend the hearing.

The Application for Permission to Appeal

3. The appellant applied for permission to appeal to the UT raising three grounds. The only one which is pertinent is the second one, which was that the judge had unjustly proceeded with the hearing when there was a valid medical excuse for the appellant and the sponsor not attending, and the appellant had made a written request to the Tribunal for an adjournment of the hearing on medical grounds, which was backed up by a medical certificate.

The Grant of Permission to Appeal

4. UT Judge McWilliam granted permission to appeal on ground 2 as it appeared to her that the documents referred to by the appellant had been faxed to Taylor House on 16 March 2015, “and arguably should have been before the judge”.

Reasons for Finding an Error of law

5. Judge Youngerwood acted reasonably in proceeding with the hearing of the appeal in the absence of the appellant and the sponsor, as on the evidence before him there was no satisfactory excuse for their non-attendance.
6. However, unknown to him, the appellant had the day before faxed to Taylor House a written request for an adjournment on medical grounds and a medical certificate. It is open to debate whether the evidence she provided was sufficiently cogent to justify an adjournment being granted. But the fact remains that, through no fault of hers or the judge, there was procedural unfairness. She was deprived of a fair hearing on the issue of whether an adjournment should be granted, and the judge draw an adverse inference from her apparent failure to explain why she and the sponsor had not attended.
7. There has thus been a defect of a procedural nature in the proceedings at first instance which has resulted in unfairness and which amounts to a material error of law requiring the decision of the First-tier Tribunal to be set aside: **MM (unfairness: E&R) Sudan [2014] 105 (IAC)**.

Conclusion

8. The decision of the FTT contained an error of law, and accordingly the decision is set aside. Given the nature of the error (procedural unfairness), the appropriate course is for the appeal to be remitted to the FTT for a de novo hearing.

Anonymity

No anonymity order is made.

Signed

Date

Deputy Upper Tribunal Judge Monson