



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

Appeal Number: IA/20347/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 3 June 2015**

**Determination Promulgated
On 15 June 2015**

Before

**UPPER TRIBUNAL JUDGE PERKINS
DEPUTY UPPER TRIBUNAL JUDGE D J ARCHER**

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**SYED NADIR ABBAS SHAH
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: Not Represented. Mr P Nathan, Counsel, acted as
Mckenzie friend

For the Respondent: Ms S Vidyadharan, Home Office Presenting Officer

DECISION AND REASONS

1. We see no need for and do not make any order restricting publication of the details of this appeal.
2. The appellant was not represented before us. Mr P Nathan of counsel happened to be in our hearing room when the case was called on and the respondent accepted his offer of assistance as a McKenzie friend. We are grateful to Mr Nathan for his assistance.


3. This is an appeal by the Secretary of State against the decision of the First-tier Tribunal (First-tier Tribunal Judge Povey) who allowed the appeal of the present respondent, hereinafter “the claimant”, against the decisions of the present appellant, hereinafter “the Secretary of State” to refuse him leave to remain in the United Kingdom and to directing his removal.
4. The claimant wanted to remain on the basis of his marriage to a British citizen and his circumstances were such that if his was a genuine marriage in accordance with the Rules he would have been allowed to stay.
5. The Secretary of State was not persuaded about the nature of the marriage and there were good reasons to be doubtful. Not the least of these was that the claimant’s wife had brought criminal proceedings against him and divorce proceedings had been started. By the time the case came before the First-tier Tribunal Judge things had changed a little. The criminal proceedings had resulted in the claimant’s acquittal and the claimant said that he intended to be reconciled to his wife.
6. There was no evidence directly from the wife about her intentions and, without meaning to be disrespectful to the First-tier Tribunal Judge, it might be thought rather surprising that in the absence of such evidence the First-tier Tribunal Judge was satisfied that there was a subsisting marriage and that it was the intention of both parties to live together permanently. The Secretary of State was given permission to appeal and the reasons for giving permission have been summarised in my introduction to this case.
7. Things did not proceed before us quite as might have been expected. The claimant arrived in the company of a woman and child who were identified as his wife and child of their marriage. Their identity was not in issue. We have seen passport photographs of the wife that confirming that the woman before us is the person she claimed to be.
8. We recognise that this is not evidence that they are now living together permanently. Neither is it evidence of what they were doing when the First-tier Tribunal decided the appeal but although we have directed ourselves correctly, I do not think we can pretend that we have been able to completely ignore the fact that the claimant and his wife do now seem to be intending to live together in a genuine relationship.
9. However we must concentrate on the position when the First-tier Tribunal Judge allowed the appeal. There was no reason advanced for disbelieving the evidence of the claimant except that it was only his evidence and not supported independently. That might not have been enough to undermine the finding but that is not right. There was before the Tribunal a letter from the wife’s solicitors who had been advising her in respect of the contemplated divorce. That says, quite unequivocally “I write further to my previous correspondence and understand that you no longer wish to proceed with your divorce proceedings as you and your husband have reconciled.”

10. The letter was dated 6 February 2015 which is approximately a fortnight before the First-tier Tribunal's decision and is, we find, very good evidence that at least by then the claimant's wife was reconciled to her husband and the broken marriage was a restored marriage.
11. The First-tier Tribunal Judge directed himself correctly, looking at paragraph 284(vi) of HC 395. We are satisfied, although this is not what we thought when we read the papers, that he was indeed entitled to conclude that the requirements of the Rules were met and that he was entitled to allow the appeal for the reasons that are given.
12. It follows therefore that we dismiss the Secretary of State's appeal.

Notice of Decision

13. The Secretary of State's appeal is dismissed.

Signed
Jonathan Perkins
Judge of the Upper Tribunal



Dated 10 June 2015