



**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/21945/2014**

THE IMMIGRATION ACTS

**Heard at Bennett House, Stoke
On 9 September 2015**

**Decision & Reasons Promulgated
On 11 September 2015**

Before

UPPER TRIBUNAL JUDGE PLIMMER

Between

FESTUS IMOIRIE

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: None

For the Respondent: Ms Johnstone (Senior Home Office Presenting Officer)

DECISION

1. The appellant appeals against a decision of the First-tier Tribunal dated 2 March 2015, dismissing his appeal against the SSHD's decision to refuse him a residence card based upon his marriage to an EEA citizen.
2. The grounds of appeal raise three points. First, the hearing should not have taken place on 27 February 2015 when a notice of hearing indicated that the hearing was adjourned to 8 July 2015. Second, the Judge was wrong to find that the sponsor was not an employed person. Third, the respondent's decision is unfair.
3. Permission to appeal was granted by Upper Tribunal Judge Perkins on 10

July 2015. He was concerned that the appellant seemed to be told that the hearing listed for 29 January 2015 was to be adjourned around the same time that the appellant's representatives told the Tribunal that they wished for the appeal to be determined on the papers rather than orally.

Hearing

4. Prior to the hearing before me a bundle of documents was submitted. This contains a skeleton argument addressing the substantive merits of the appeal and evidence said to be relevant to the sponsor's employment. There was no appearance by the appellant or his representative at the hearing before me. There was no explanation for this non-attendance.
5. Ms Johnstone asked me to dismiss the appeal and I indicated that I did not consider the appellant's grounds were made out, in the absence of any further explanation, and I would be dismissing the appeal. I now give my reasons for dismissing the appeal.

Error of law discussion

6. The Judge was satisfied that the marriage could not be said to be one of convenience [15]. The Judge was however concerned that the appellant's spouse had ceased work on a date prior to 22 March 2014 and there was insufficient evidence to suggest she had started another job or was looking for work [18]. This was a finding entirely open to the Judge on the material available.
7. It is necessary to rehearse a little more about events leading to the Judge determining the appeal on the papers. The appeal was due to be heard as an oral hearing on 29 January 2015. Prior to this, on 26 January 2015, the appellant's solicitors requested the hearing to be changed from an oral hearing to a paper hearing. The Tribunal responded to this on 27 January 2015 by issuing a notice confirming that the appellant has indicated that he wants the appeal to be decided on the papers without a hearing. This notice also states *"You must send any written evidence and submissions to the Tribunal and the Respondent by 19 February 2015"*.
8. I have checked the Tribunal file. It appears from this that the Tribunal did not receive any further written evidence or submissions until the bundle that was recently received on 25 August 2015. The First-tier Tribunal was therefore fully entitled to determine the appeal on the papers (because this is what the appellant's representatives requested) and on the material available (because no further material was sent in compliance with directions).
9. I accept that coincidentally on 27 January 2015 the appeal that was listed for 29 January 2015 was adjourned due to a lack of court time and was relisted for 8 July 2015. A notice to this effect was sent to the appellant's solicitors. This notice seems to have crossed with the appellant's solicitors request for the hearing to proceed on the papers. I am not satisfied that

this notice has caused any procedural unfairness to the appellant. The appellant and his solicitors were clearly told that the application for the hearing to take place on the papers was granted and that any additional material needed to be filed by 19 February 2015. The appellant's solicitors have provided no explanation for not complying with these directions. There has been no explanation as to how the appellant was caused any unfairness in having his appeal determined on the papers as requested. The appellant has not appeared at the hearing before me and I still have no explanation as to how he has been caused any unfairness.

10. That disposes of the first ground of appeal. The second ground of appeal amounts to no more than a disagreement with the factual findings. The Judge was entitled to these on the material available. It is difficult to understand the third ground of appeal which does not criticise the Tribunal's findings but the fairness in the respondent's decision. This does not identify any error of law on the part of the Judge.
11. Finally, the appellant sought to rely upon Article 8 before the First-tier Tribunal. As no notice under section 120 of the 2002 Act has been served and no EEA decision to remove has been made, the appellant was not entitled to bring a human rights challenge to removal in an appeal under the EEA Regulations. That this is so has now been clearly decided in *Amirteymour and others (EEA appeals; human rights)* [2015] UKUT 466 (IAC).

Decision

12. The decision of the First-tier Tribunal does not contain an error of law and is not set aside.

Signed:

Ms M. Plimmer
Judge of the Upper Tribunal

Date:
10 September 2015