



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

**Appeal Number: IA/27242/2014**

**THE IMMIGRATION ACTS**

**Heard at Manchester Piccadilly  
On 30 April 2015**

**Decision Promulgated  
On 18 May 2015**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE BIRRELL**

**Between**

**REHAN RASHEED  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr J Holt, counsel instructed by Abbey Solicitors

For the Respondent: Mr G Harrison, Senior Home Office Presenting Officer

**DECISION AND REASONS**

**Introduction**

1. I have considered whether any parties require the protection of an anonymity direction. No anonymity direction was made previously in respect of this Appellant. Having considered all the circumstances and evidence I do not consider it necessary to make an anonymity direction.
2. The Secretary of State for the Home Department brings this appeal but in order to avoid confusion the parties are referred to as they were in the First-tier Tribunal. This is an appeal by the Secretary of State against a decision of First-tier Tribunal Judge

Hague promulgated on 10 November 2014 which allowed the Appellant's appeal against a refusal of a residence card as conformation of his right to reside in the United Kingdom as the spouse of an EEA national exercising Treaty rights . The Judge allowed the appeal under the EEA Regulations.

### Background

3. The Appellant was born on 4 March 1985 and is a national of Pakistan. The Appellant entered the United Kingdom as a Tier 4 student on 29 June 2012 and married his wife Stanislava Kimkova a Slovakian national on 5 December 2013.
4. On 23 December 2013 the Appellant applied for a residence card under the Immigration (European Economic Area) Regulations 2006.
5. On 19 June 2014 the Secretary of State refused the Appellant's application. The basis of the refusal was the Respondent's view that this was a sham marriage. On 4 June 2014 the Appellant and his wife were interviewed by the Respondent and there were a number of inconsistencies and conflicting answers which cast doubt on the marriage and suggested it was a sham marriage.

### The Judge's Decision

6. The Appellant appealed to the First-tier Tribunal. The grounds of appeal stated that in essence:
  - (a) The responses found in the refusal letter are taken out of the context of a lengthy interview.
  - (b) The Appellant has never received a full copy of the interview.
  - (c) Explanations are given for the claimed discrepancies.
7. First-tier Tribunal Judge Hague ("the Judge") allowed against the Respondent's decision after hearing evidence from both the Appellant and the sponsor and two witnesses. The Judge in his decision:
  - (a) Summarised the discrepancies alleged in the marriage interview (paragraph 6)
  - (b) After hearing evidence from both of them about events since they met in October 2012 concluded that they were describing the same events albeit from different perspectives (paragraph 7).
  - (c) He heard evidence from the two witnesses.
  - (d) The fact that the Appellant had not been in the United Kingdom for very long and his course had been unsuccessful as a result of the college being suspended inevitably provokes suspicion.
  - (e) Having observed the Sponsor he formed the view that '*at least from her point of view the marriage was genuine and she was therefore likely to be telling me the truth.*'

- (f) He found it notable that they were still together two years later.
  - (g) He found the marriage to be genuine.
8. Grounds of appeal were lodged on the basis, in essence, of inadequate reasoning; and on 12 January 2015 First-tier Tribunal Judge Shimmin gave permission to appeal.
9. At the hearing I heard submissions from Mr Harrison on behalf of the Respondent that :
- (a) He relied on the grounds.
  - (b) The decision was very brief.
  - (c) The reasoning was inadequate.
10. On behalf of the Respondent Mr Holt submitted that :
- (a) There was a clear credibility finding in relation to the sponsor in paragraph 9.
  - (b) In paragraph 7 he makes a finding in relation to the Appellant.
  - (c) The Judge acknowledged that there were discrepancies in paragraph 6.

### **Finding on Material Error**

11. Having heard those submissions I reached the conclusion that the Tribunal made material errors of law.
12. This was an appeal against a refusal of a Residence Card where the Respondent's position was that this was a sham marriage. The burden of proving that a marriage is not a "marriage of convenience" for the purposes of the EEA Regulations rests on the Appellant: but he is not required to discharge it in the absence of evidence of matters supporting a suspicion that the marriage is one of convenience (i.e. there is an evidential burden on the Respondent). In this case the suspicion arose out of the timing of the marriage and the fact that there were a number of inconsistencies highlighted between the Appellant and the Respondent after a so called marriage interview. These inconsistencies were highlighted in the refusal letter and in essence relates to 10 issues.
13. The Judge summarised those inconsistencies in paragraph 6 of the decision. I am satisfied that the Judge failed to engage with these specific challenges raised in relation to the Appellant's claimed relationship and only directly addressed two of them and in relation to the rest simply said 'they were describing the same events albeit from different perceptions and standpoints.'
14. The Judge made a very clear finding in relation to the sponsor as to whether the marriage was genuine but this was insufficient given that it is the Appellant's appeal. The failure of the First-tier Tribunal to address and determine whether the marriage was genuine from the Appellant's perspective as he did for the sponsor constitutes a clear error of law. I do not accept that this can be extrapolated from the finding at

paragraph 7 that there is a common chronology. This error I consider to be material since had the Tribunal conducted this exercise the outcome could have been different. That in my view is the correct test to apply.

15. I therefore found that errors of law have been established and that the Judge's determination cannot stand and must be set aside in its entirety as there was a failure to make findings in relation to central issues in the case. All matters to be redetermined afresh.
16. Under Part 3 paragraph 7.2(b) of the Upper Tribunal Practice Statement of the 25<sup>th</sup> of September 2012 the case may be remitted to the First Tier Tribunal if the Upper Tribunal is satisfied that:
  - (a) the effect of the error has been to deprive a party before the First-tier Tribunal of a fair hearing or other opportunity for that party's case to be put to and considered by the First-tier Tribunal; or
  - (b) the nature or extent of any judicial fact finding which is necessary in order for the decision in the appeal to be re-made is such that, having regard to the overriding objective in rule 2, it is appropriate to remit the case to the First-tier Tribunal.
17. In this case I have determined that the case should be remitted because there was a failure to make adequate findings in relation to central issues in the case and in relation to the credibility of the Appellant and the two witnesses. In this case none of the findings of fact are to stand and the matter will be a complete re hearing.
18. I consequently remit the matter back to the First-tier Tribunal sitting at Manchester to be heard on a date to be fixed, before me.
19. I made the following directions for the resumed hearing
  - The Respondent to provide a full transcript of the marriage interview 5 days before the hearing.
  - If interpreters are required the court must be notified.List for 2 hours.

Signed

Date 7.5.2015

Deputy Upper Tribunal Judge Birrell