



IAC-AH-DP-V2

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

Appeal Number: IA/33936/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 18th August 2015**

**Decision & Reasons Promulgated
On 2nd September 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE D N HARRIS

Between

**MRS IVA SPAHIU
(NO ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Dr N Chisti, Solicitor

For the Respondent: Mr S Whitwell, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a citizen of Albania born on 6th August 1988. She first arrived in the United Kingdom on 24th September 2010 with leave to enter as a Tier 4 (General) Student valid until 14th February 2012. That visa was subsequently extended under her capacity as a Tier 1 (Post-Study) Migrant until 18th April 2014. On 10th April 2014 the Appellant applied for leave to remain as a spouse of a settled person. That application was refused by the Secretary of State by Notice of Refusal dated 18th August 2014.

2. The Appellant appealed and the appeal came before Judge of the First-tier Tribunal Majid sitting at Taylor House on 28th January 2015. In a determination promulgated on 2nd February 2015 the Appellant's appeal was allowed.
3. On 6th February 2015 the Secretary of State lodged Grounds of Appeal to the Upper Tribunal. Those grounds made three contentions:
 - (i) that the First-tier Tribunal Judge had failed to give reasons or any adequate reasons for findings on material matters;
 - (ii) had failed to take into account and/or resolve conflicts of the fact or opinion on material matters; and
 - (iii) had given weight to immaterial matters.
4. On 23rd March 2015 First-tier Tribunal Judge Pirotta granted permission to appeal. Judge Pirotta indicated that the decision disclosed arguable material errors of law and that there was merit in the application on the basis that the application properly raised concerns that the First-tier Tribunal judge had relied on the relevant, specious and personal opinions, on a meandering personal diversion and had not properly taken the facts or issues into account and was in error in not providing a reasoned decision with cogent findings on the evidence available.
5. By detailed letter dated 2nd April 2015 the Appellant's instructed solicitor responded to the Grounds of Appeal under Rule 24.
6. It is on that basis that the appeal comes before me. Initially on the basis to determine whether or not there is a material error of law in the decision of the First-tier Tribunal. For the purpose of continuity within the appeal process I refer herein to Mrs Spahiu as the Appellant and to the Secretary of State as the Respondent albeit that this is an appeal by the Secretary of State. The Appellant appears by her instructed solicitor Dr Chisti. Dr Chisti is familiar with this matter. He appeared before the First-tier Tribunal and is the author of the Rule 24 response. In addition the Appellant personally attends as does her husband. The Secretary of State appears by her Home Office Presenting Officer Mr Whitwell.

Submissions/Discussions

7. Mr Whitwell relies on the Grounds of Appeal. His strongest argument is that the judge has actually failed to give any reasons for the conclusions that he has reached and that paragraph 22 of the determination actually fails to set out any reasons. Secondly he submits that the judge fails to take into account the issues that are in dispute in the appeal, that the judge has failed to record any of the arguments put forward by either advocate or mention any of the points mentioned in the reason for refusal letter. He therefore contends that the judge has not addressed the relevant issues in the appeal which he considers constitute a material error of law. Thirdly he asserts that the Immigration Judge refers to irrelevant considerations particularly to be found at paragraphs 16, 18 and

20 of the decision and that in concerning himself with irrelevant matters rather than issues that go to the heart of the appeal he has materially erred in law.

8. In response Mr Chisti acknowledges that the decision is not ideal but submits that the only issue that was before the First-tier Tribunal Judge was the genuineness of the marriage and that he had found that it was genuine and he had set out why. He points out that any query with regard to the ability to reach a minimum level of maintenance was not an issue extant before the Tribunal. So far as other issues are concerned particularly the immaterial issues and if they constitute an error in their inclusion in the determination they are not material and that the judge has given a dispositive view at paragraph 10 of his decision which is justified in the finding that he eventually made.
9. In response Mr Whitwell acknowledges that the written grounds do not challenge the validity of the marriage but that the judge's overall reasoning is challenged.

The Law

10. Areas of legislative interpretation, failure to follow binding authority or to distinguish it with adequate reasons, ignoring material considerations by taking into account immaterial considerations, reaching irrational conclusions on fact or evaluation or to give legally inadequate reasons for the decision and procedural unfairness, constitute errors of law.
11. It is not an arguable error of law for an Immigration Judge to give too little weight or too much weight to a factor, unless irrationality is alleged. Nor is it an error of law for an Immigration Judge to fail to deal with every factual issue of argument. Disagreement with an Immigration Judge's factual conclusion, his appraisal of the evidence or assessment of credibility, or his evaluation of risk does not give rise to an error of law. Unless an Immigration Judge's assessment of proportionality is arguable as being completely wrong, there is no error of law, nor is it an error of law for an Immigration Judge not to have regard to evidence of events arising after his decision or for him to have taken no account of evidence which was not before him. Rationality is a very high threshold and a conclusion is not irrational just because some alternative explanation has been rejected or can be said to be possible. Nor is it necessary to consider every possible alternative inference consistent with truthfulness because an Immigration Judge concludes that the story is untrue. If a point of evidence of significance has been ignored or misunderstood, that is a failure to take into account a material consideration.

Finding on Error Law

12. The decision of the First-tier Tribunal Judge is in many respects as Mr Chisti has put it so succinctly "not ideal". It is difficult to follow the judge's reasoning. Having said that it has to be looked at against the basis upon

which this matter was appealed. The reason of refusal letter contends strongly, particularly at pages 1 and 2, that the Appellant's relationship is not genuine and therefore the Secretary of State is not satisfied that the Appellant can meet E-LTRP.1.7 of the Immigration Rules. It is against that finding that the Secretary of State chose to submit criticisms on the determination.

13. It is Mr Whitwell's acknowledgement that the written grounds now do not seek to challenge the validity of the marriage only the judge's reasoning. I acknowledge that a careful acknowledgement of the decision shows material errors of law. It is necessary for a judge to give his reasons as to why the appeal was allowed. That is not in the determination. However all that is missing is a short sentence setting that out. What the judge has done is at paragraph 10 of his decision to state that having heard the oral evidence and considered the witness statement of the Appellant contradictions pointed out by the Secretary of State do not take away the substance of the marriage. He has then gone on at paragraph 15 to go through item by item those areas where the Secretary of State had concern in that it was contended that the Appellant and her husband had given conflicting answers to questions where clearly they would be expected to give similar answers and has set out at the end of each item their responses to those criticisms. What he has failed to do is to link those answers to a general finding. That constitutes a material error of law.
14. So far as the second Ground of Appeal is concerned it is difficult to know exactly what the Secretary of State is implying. The grounds stipulate, and Mr Whitwell seeks to amplify it, that the judge has failed to take into account any of the issues that are in dispute in this appeal. That clearly cannot be the case. What he has failed to do is to provide the basis for linking paragraph 10 to paragraph 15 of his decision. That clearly was the principal issue that was outstanding before the Tribunal. Reference is made by Mr Whitwell to the meeting by the Appellant of the relevant maintenance requirements. Dr Chisti indicates this was not an issue before the Tribunal and was not challenged nor raised by the Home Office Presenting Officer. Further the judge has referred to it at paragraph 13 of his determination and importantly it is not raised as an issue in the Grounds of Appeal. The submission therefore is spurious and does not constitute a material error of law.
15. Finally reference is made to irrelevances within the determination. It is difficult to see the relevance of paragraph 16 to 20 of the determination. Judge Pirotta quite properly describes those paragraphs as irrelevant, specious, personal opinions and a meandering personal diversion when granting permission to appeal. However while such paragraphs do, I agree, add nothing to the determination they do not in fact detract from it. They are essentially irrelevant and unnecessary and I do not think they should have been included. However whilst their inclusion may well be construed as an error of law I do not consider it material to the outcome of this decision.

The Re-Making of the Decision

16. Consequently I am left with the fact the Secretary of State has not openly challenged the finding that the marriage of the Appellant is a valid one. The sole ground upon which there was a material error of law was the failure of the judge to link paragraph 10 to paragraph 15. However the following factors are clear:
- (i) in taking the evidence the judge addressed the concerns of the Secretary of State concluding the marriage was valid;
 - (ii) the Grounds of Appeal do not contend that that conclusion was wrong merely the manner in which it was reached was not shown;
 - (iii) but bearing that in mind and whilst acknowledging I have not taken evidence it is clear that following the hearing before the First-tier Tribunal the Secretary of State and the judge were both entitled to conclude that the evidence given by the Appellant and her spouse showed that the marriage was valid.
17. On that basis the judge was entitled to conclude that the Appellant met the requirements of the Immigration Rules. It should be said that the Secretary of State has not helped herself in this matter in the manner in which the Grounds of Appeal are drafted. They are drafted in very vague and general terms. They do not raise, as Mr Whitwell acknowledges, that the judge was not entitled on the evidence to find that the marriage was valid or even in the alternative that the maintenance requirements were not met. Those facts as far as the validity of the marriage is concerned are addressed by the judge in paragraph 15. What he should have said is that having made those findings he is satisfied that the parties' marriage is valid and meets the terms of the Immigration Rules. There is no reference in the Grounds of Appeal to the aspect of maintenance not being met. Indeed as Mr Chisti indicates it was not an issue before the judge it having been conceded by the Secretary of State in any event in a short one line sentence at paragraph 13 of the determination that the judge has addressed this issue. In such circumstances I am satisfied that the Appellant meets the requirements of the Immigration Rules and by remaking the decision reaching effectively the same conclusion as the First-tier Tribunal Judge the Appellant's appeal is allowed under the Immigration Rules.

Notice of Decision

I found that there was a material error of law in the decision of the First-tier Tribunal Judge and having set aside that decision the decision is remade reinstating the decision and allowing the Appellant's appeal under the Immigration Rules.

No anonymity direction is made.

Signed

Date

Deputy Upper Tribunal Judge D N Harris

TO THE RESPONDENT
FEE AWARD

No fee is paid or payable and therefore there can be no fee award.

Signed

Date

Deputy Upper Tribunal Judge D N Harris