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

Appeal Number: IA/40963/2014

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 14 October 2015**

**Decision Promulgated  
On 21 October 2015**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE FROM**

**Between**

**USMAN SHUKAT ALI**  
(NO ANONYMITY DIRECTION MADE)

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: None

For the Respondent: Mr L Tarlow, Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant is a citizen of Pakistan born on 3 January 1986. His application for a residence card as confirmation of a right of residence as the family member of an EEA national exercising Treaty rights was refused on 30 September 2014. The respondent alleged the appellant had entered into a marriage of convenience with Ms Vera Ferreira Coelho, a Portuguese national. The appellant submitted a notice of appeal maintaining he was living with his partner and requesting an oral hearing.

2. The appeal was heard by Judge of the First-tier Tribunal Zahed on 24 April 2015. There was no appearance by the appellant or his partner. The judge noted that no evidence had been filed by the appellant despite the indication in the grounds of appeal that a bundle would be provided. He also noted that the appellant's former solicitors had written to say they were no longer instructed. They had not received any instructions from the appellant. The judge checked with his clerk at 12.00 that the appellant had not left any message. Having ascertained that nothing had been heard from the appellant, he decided to proceed in his absence.
3. The judge dismissed the appeal, finding a marriage of convenience. He relied on the detailed immigration report stating that the appellant shared a room at 14 [ - ], London E17 with a male and not his EEA partner to find that the evidential burden on the respondent had been discharged. The appellant had filed no evidence to discharge the burden on him to show his was not a marriage of convenience.
4. The grounds seeking permission to appeal were submitted by the appellant in person. They argue there was procedural unfairness in that he had faxed a letter to the Tribunal the day before the hearing, stating he was "seriously ill" and requesting an adjournment for a few weeks. A copy of the fax was attached to the grounds together with a transmission report. The grounds also stated the appellant had been living at 14 [ - ] for about three years and his partner had joined him at this address. Permission to appeal was granted by the First-tier Tribunal on the procedural unfairness point.
5. The appellant did not attend the hearing and was unrepresented. I checked that the notice of hearing had been sent to the correct address in good time and had not been returned. There was nothing in the file to indicate the appellant had notified the Tribunal of a change of address. I considered that the appellant had been served with notice of the hearing and I should proceed in his absence.
6. In informed Mr Tarlow that the fax which the appellant said he had sent on the day before the hearing in the First-tier Tribunal was on the file and was date-stamped 23 April 2015. There was no doubt it had been received and attached to the file when Judge Zahed heard the appeal. The fax stated as follows:

"I write to inform the Tribunal I am seriously ill and therefore in these circumstances I request the Tribunal to adjourn my hearing which is listed tomorrow i.e. 24<sup>th</sup> April 2015 for few weeks.

Please note that as soon as I recover a bit I will forward the medical evidence to the Tribunal.

Kindly consider the above matter."
7. In those circumstances, Mr Tarlow accepted that the decision of Judge Zahed should be set aside because of the procedural unfairness caused by his failing to consider the adjournment request. The appellant had not

been given a hearing even though he had asked for his appeal to be adjourned so that he could attend. He as deprived of that opportunity.

8. I therefore set aside the decision of Judge Zahed dismissing the appeal. In accordance with Practice Statement 7.2(a), this is a case which must be remitted to the First-tier Tribunal for re-hearing at Hatton Cross by any judge other than Judge Zahed.
9. The following **Directions** are made to assist with the disposal of the appeal:
  - (1) The Respondent must file and serve no later than 14 days before the hearing all relevant evidence supporting the assertions made in the reasons for refusal letter, including (but not limited to) evidence regarding the visit by immigration officers to 14 Rodney Place, London E17 on 13 August 2014, otherwise the First-tier Tribunal might consider the evidential burden of showing reasonable grounds for suspicion has not been discharged (see *Papajorgji (EEA spouse - marriage of convenience) Greece* [2012] UKUT 00038 (IAC));
  - (2) The Appellant must file and serve evidence up to the date of hearing showing the subsistence of his marriage with Ms Ferreira Coelho, to include (but not limited to) witness statements to stand as evidence-in-chief, evidence of cohabitation and evidence of Ms Ferreira Coelho's employment;
  - (3) The Appellant must file and serve medical evidence showing why he was unable to attend the hearing in the First-tier Tribunal on 24 April 2015 and he should explain why neither he nor Ms Ferreira Coelho attended the hearing in the Upper Tribunal on 14 October 2015; and
  - (4) The Appellant must be prepared to explain why the grounds of appeal to the First-tier Tribunal asserted that a fully paginated bundle would be sent but no evidence was filed and also why he stated that he and his partner had moved address (so were not home when the immigration officers visited) but he continued to give his address as 14 [ - ], London E17. The Tribunal may draw adverse inferences from a failure to address any of these matters.

### **NOTICE OF DECISION**

The First-tier Tribunal's decision contains a material error of law is set aside. The appeal is remitted to the First-tier Tribunal for re-hearing (not by Judge Zahed).

**Signed**

**Date 15 October 2015**

**Judge Froom,**

sitting as a Deputy Judge of the Upper Tribunal