



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

Appeal Number: IA/47509/2014

**THE IMMIGRATION ACTS**

**Heard at Glasgow  
on 16 June 2015**

**Determination issued  
on 23 June 2015**

**Before**

**UPPER TRIBUNAL JUDGE MACLEMAN**

**Between**

**MUHAMMED IRFAN**

Appellant

**and**

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

Respondent

**Representation**

For the Appellant: Mr C H Ndubuisi, of Drummond Miller, Solicitors

For the Respondent: Mr M Matthews, Senior Home Office Presenting Officer

**DETERMINATION AND REASONS**

1. The appellant appeals against a determination by First-tier Tribunal Judge Handley, promulgated on 11 March 2015, dismissing his appeal against refusal of a residence card under the Immigration (European Economic Area) Regulations 2006.
2. The determination contains what are on the face of it sound reasons for rejecting the evidence from the appellant and the sponsor, based on significant discrepancies arising from their interview. Perusal of the interview record discloses discrepancies going even beyond those founded upon in the refusal letter and in the determination.

3. The grounds of appeal take issue with points which are made in the determination, some of which plainly have more weight than others. They also take issue with the Judge's failure to consider evidence that the appellant and sponsor had been cohabiting since November 2013 in a household which included their daughter born on 12 August 2014, as well as the sponsor's older child.
4. Permission to appeal was granted on the basis that the Judge arguably failed to take into account that other evidence. A Rule 24 response says that there was no error, based on paragraph 30 of the determination where the Judge says "having carefully considered all the evidence before me I conclude that the marriage is not a genuine one". However, Mr Matthews conceded that the phrase at paragraph 30 is the only reference to the other evidence, and that it is of such significance and extent that failure to consider it was a material error.
5. The respondent made no concession on the eventual merits of the case.
6. The determination of the First-tier Tribunal is **set aside**. None of its findings are to stand. Under section 12(2)(b)(i) of the 2007 Act and Practice Statement 7.2 the nature and extent of judicial fact-finding necessary for the decision to be remade is such that it is appropriate to **remit the case to the First-tier Tribunal**. The member(s) of the First-tier Tribunal chosen to reconsider the case are not to include Judge Handley.



18 June 2015  
Upper Tribunal Judge Macleman