



IAC-AH-SC-V1

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

Appeal Number: IA/50780/2014

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 2<sup>nd</sup> October 2015**

**Decision & Reasons Promulgated  
On 12<sup>th</sup> October 2015**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE M A HALL**

**Between**

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

Appellant

**and**

**DIANA ALVAREZ VEGA  
(ANONYMITY ORDER NOT MADE)**

Respondent

**Representation:**

For the Appellant: Mr S Whitwell, Senior Home Office Presenting Officer  
For the Respondent: Mr P Turner of Counsel instructed by Farani Javid Taylor,  
Solicitors

**DECISION AND REASONS**

**Introduction and Background**

1. The Secretary of State appeals against the decision of Judge of the First-tier Tribunal Wiseman (the Judge) promulgated on 15<sup>th</sup> May 2015.
2. The Respondent before the Upper Tribunal was the Appellant before the First-tier Tribunal and I will refer to her as the Claimant.
3. The Claimant is a female Spanish citizen born 26<sup>th</sup> January 1980 who appealed to the First-tier Tribunal against the Respondent's decision dated

19<sup>th</sup> December 2014 to remove her from the United Kingdom with reference to regulations 19(3)(a), (c) and 21B(2) and 24(2) of The Immigration (European Economic Area) Regulations 2006 (the 2006 Regulations).

4. There was no reference in the decision as to why the Respondent proposed to remove the Appellant and there was no Reasons for Refusal letter. There was reference in form IS.151A (EEA) which is a notice to a person liable to removal, indicating that the Appellant was considered to be a person who had entered into or attempted to enter into a sham marriage.
5. The appeal was heard by the judge on 29<sup>th</sup> April 2015. The Secretary of State was not represented at the hearing.
6. The judge considered the bundle of documents submitted on behalf of the Secretary of State and found that there was no evidence contained therein to indicate that the Claimant had entered into a sham marriage. It was the Claimant's case that she had entered into a genuine marriage with Mehraj Ali, who she had married at Greenwich Register Office on 23<sup>rd</sup> December 2014.
7. The judge noted the absence of any interview record or any other document to prove a sham marriage. The judge found that the Secretary of State had provided no evidence to support the decision that had been made, and therefore allowed the appeal pursuant to the 2006 Regulations.
8. This prompted the Secretary of State to apply for permission to appeal to the Upper Tribunal. The grounds contend that the judge failed to resolve a conflict. It was submitted that the judge had made no findings as to whether or not the Claimant had been involved in a marriage of convenience and that he had erred in simply allowing the appeal because the Secretary of State had not provided enough information. It was submitted that if the judge could not reach a decision on the evidence before him, he should have directed the Secretary of State to provide such evidence before a decision could be reached.
9. Permission to appeal was granted by Judge of the First-tier Tribunal Mark Davies, who found;

"The decision is wholly inadequate as the judge appears to have ignored, without any explanation, evidence that was before him that the Appellant had entered into a sham marriage.

The grounds and the determination do disclose an arguable error of law."
10. Following the grant of permission the Claimant did not lodge a response pursuant to rule 24 of the Tribunal Procedure (Upper Tribunal) Rules 2008. The Tribunal issued directions that there should be an oral hearing before the Upper Tribunal to ascertain whether the First-tier Tribunal had erred in law such that the decision should be set aside.

## **Oral Submissions**

11. Mr Whitwell relied upon the grounds contained within the application for permission to appeal although he conceded that he was unclear as to what documents had been submitted to the First-tier Tribunal by the Secretary of State. I indicated that the documents were on file under cover of form ICD.2730 dated 30<sup>th</sup> January 2015. I had perused those documents and could find no evidence that related to a marriage of convenience. I allowed Mr Whitwell the opportunity to consider the documents and he accepted that there was no such evidence. In the light of that Mr Whitwell accepted that as the burden of proof was on the Secretary of State, it was somewhat difficult to criticise the judge in the light of the lack of evidence. Mr Whitwell pointed out that the author of the grounds seeking permission would not have been aware what documentation was before the First-tier Tribunal.
12. I then heard submissions from Mr Turner who contended that as no evidence had been produced by the Secretary of State, the judge had not erred in law.

## **My Conclusions and Reasons**

13. The judge did not err in law. I respectfully disagree with the judge granting permission. I observe that notice of the First-tier Tribunal hearing was given on 14<sup>th</sup> January 2015 to both parties. The Secretary of State did not apply for an adjournment and did not supply a Presenting Officer.
14. It is common ground that the burden of proof in this appeal was initially on the Secretary of State. I find as a fact that the bundle submitted by the Secretary of State did not contain any relevant evidence to support the contention that the Claimant had entered into a marriage of convenience. There was no reasons for refusal letter explaining the Secretary of State's decision, and no interview notes.
15. The judge correctly found that there was a complete absence of evidence to prove that the Claimant had entered into a marriage of convenience and made this point in paragraphs 20, 23 and 25 of his decision.
16. In the absence of any application for an adjournment, it is in my view simply wrong to contend that the judge should, in the absence of evidence, have adjourned the hearing to allow the Secretary of State to provide evidence.
17. The judge, in my view, would have erred had he adjourned the hearing, and his decision discloses no error of law. This is not a case where the judge failed to resolve any conflict of evidence, as there was no evidence before him that the Claimant had entered into a marriage of convenience.

## **Notice of Decision**

The decision of the First-tier Tribunal does not disclose an error of law. The decision therefore stands and the appeal of the Secretary of State is dismissed.

**Anonymity**

No anonymity direction was made by the First-tier Tribunal. There has been no request for anonymity, and the Upper Tribunal makes no anonymity order.

Signed

Date

Deputy Upper Tribunal Judge M A Hall

5<sup>th</sup> October 2015

**TO THE RESPONDENT  
FEE AWARD**

The decision of the First-tier Tribunal stands and therefore so does the decision to make a fee award.

Signed

Date

Deputy Upper Tribunal Judge M A Hall

5<sup>th</sup> October 2015