



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

Appeal Number: IA/51525/2013

THE IMMIGRATION ACTS

**Heard at Field House
On 23 January 2015**

**Determination Promulgated
On 3 February 2015**

Before

DEPUTY JUDGE OF THE UPPER TRIBUNAL DRABU CBE

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MICHAEL ONYEMAEZE

Respondent

ANONYMITY DIRECTION NOT MADE

Representation:

For the Appellant: Mr S Walker, Senior Presenting Officer.

For the Respondent: Mr O Nwokeji, Solicitor

DETERMINATION AND REASONS

1. The appellant in this appeal is the Secretary of State who was granted permission to appeal to the Upper Tribunal against the decision of Judge Majid who for reasons given in his determination promulgated on 25 September 2014 allowed the appeal of the respondent. The respondent, a national of Nigeria had been refused a residence card as a confirmation of a right to reside in the United Kingdom as husband of an EEA national. The Secretary of State took the view that the marriage between the

respondent and his EEA national wife was one of convenience. It was also concluded that their relationship was not genuine or subsisting.

2. Judge Majid at Taylor House heard appeal against the decision on 17 September 2014 and for the reasons given in his determination, which was promulgated on 25th of September 2014, he allowed the appeal. He found that the marriage between the respondent and his sponsor was a genuine marriage and the relationship between the two was a subsisting relationship. The Judge also concluded that the respondent merits the benefit of the Immigration (European Economic Area) Regulations 2006, as amended, as well as the Articles of the ECHR.
3. In granting permission to appeal, Judge P J M Hollingworth, a judge of the First-Tier tribunal said “arguable errors of law have arisen in respect of applying TA and Others, the validity of the proxy manage, the methodology of approach in relation to the issue of the marriage of convenience and in respect of the analysis of the factors leading to the conclusion of durability of the relationship.”
4. At the hearing before me, Mr Nwokeji, representing the respondent readily conceded that the determination was unsustainable for reasons identified in the grounds of appeal supporting the application. Mr S Walker asked that the determination be set aside and a remittal for de-novo hearing before the First tier Tribunal be directed. Mr Nwokeji did not resist the request.
5. Accordingly the decision made by Judge Majid is set aside as being in material errors of law. This appeal is therefore allowed. I direct that the appeal be heard afresh by any Judge of the First Tier Tribunal except Judge Majid.

K Drabu CBE
Deputy Judge of the Upper Tribunal.
2 February 2015

DIRECTIONS REGARDING ANONYMITY NOT MADE.

ORDER ON FEES:

The appeal having been allowed and it having been found that the impugned decision was fundamentally flawed, I direct that order made by Judge Majid to award for full fees to be paid to Mr Onyemaeze be reversed. No award for fees is made.

K Drabu CBE
Deputy Judge of the Upper Tribunal

