



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: IA/11302/2015

THE IMMIGRATION ACTS

Heard at Field House  
On 16 March 2016

Decision & Reasons Promulgated  
On 8 April 2016

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAPMAN

Between

MR GHULAM ABBAS  
(ANONYMITY DIRECTION NOT MADE)

Appellant

v

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Maqsood, counsel instructed by Denning solicitors

For the Respondent: Mr D Clarke, Senior Presenting Officer

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ERROR OF LAW & REASONS

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1. The Appellant is a national of Pakistan, born on 1 May 1988. He entered the United Kingdom as a student on a visa valid until 29 March 2014. His leave to remain was subsequently curtailed on 4 October 2013 although the Appellant was unaware of this. On 28 March 2014, the Appellant married a Romanian national born on 28 June 1985. On 17 April 2014 he applied through his solicitors for a residence card as confirmation of his right to reside as the spouse of an EEA national. This application was rejected on 26 February 2015 on the basis that the Respondent took the view that the marriage was one of convenience and insufficient evidence had been submitted of the EEA family member's current economic activity in the United Kingdom.
2. An appeal was lodged against this decision, however, no fee was apparently paid. On 24 June 2015, the Appellant's solicitors wrote requesting that the appeal should be heard on the papers. On 25 June 2015, this request was refused.
3. The appeal came before Judge of the First tier Tribunal Lucas for hearing on 26 June 2015. The Appellant was represented and present. In a decision promulgated on 26 August 2015, the Judge found that there was no appeal before the Tribunal. At [5] the First tier Tribunal Judge held:

**“As of the date of the Hearing on 26<sup>th</sup> June 2015, before this Tribunal, no Fee had been paid in respect of an Oral appeal. What is more, there was confusion as to the whether this was in fact an Oral or a Paper appeal. The Respondent had assumed that it was a Paper appeal.”**
4. The Judge also recorded at [6] that the Appellant's representative stated that he had been instructed late, was unaware of the history of the appeal and having retired to take instructions from the Appellant, expressed the view that this appeal might be withdrawn.
5. The Judge then proceeded to find that there was no appeal before the Tribunal as no fee had been paid.
6. An application for permission to appeal was made on 23 September 2015, in time on the basis that the decision was only received on 22 September 2015. The grounds in support of the application assert that the Appellant paid the fee of £140 for an oral hearing on 13 April 2015 and a copy of the payment receipt was attached. It was further asserted that the Appellant's case has merit and he should be given a fair opportunity to have his case presented before the Tribunal in order to obtain a fair decision and he never aimed to withdraw his appeal.
7. Permission to appeal was granted on 28 January 2016 by Judge of the First tier Tribunal Hollingworth on the basis that an arguable error of law had

arisen in relation to the denial of a hearing to the Appellant in the circumstances set forward in the permission application.

*Hearing*

8. At the hearing before me, the Appellant was represented by counsel other than the representative instructed at the hearing before the First tier Tribunal. I asked whether he had any additional evidence that the fee had been paid as it was not clear from the Tribunal file and the payment receipt was unclear. He did not have such evidence but requested a short adjournment to see if he was able to obtain it. I requested the Tribunal clerk to check the ARIA system and this confirmed that the requisite fee of £140 had been paid on 14 April 2015 and had cleared on 15 April. There was a subsequent entry on 24 April to strike the appeal out due to an out of time allegation but this did not take place because the money had been paid.

9. Mr Maqsood submitted that if the fee had been paid there remains a determination that has an error in it in respect of the purported withdrawal of the appeal. He submitted that the decision in itself does not fully provide the reasons for why the Tribunal would have taken a decision to consent to withdrawal of the appeal. His instructions were that the Appellant was not seeking to withdraw his appeal.

10. Mr Clarke provided me with a copy of the Home Office Presenting Officer's notes which provided: "*my decision to withdraw - can also dismiss.*" There is no record of proceeding by the First tier Tribunal Judge on the Tribunal file.

*Decision and reasons*

11. It is now clear that the requisite fee of £140 for an oral hearing was paid on 14 April 2015. This is matter of objective fact which is clear from the ARIA system. For this reason, I find that the First tier Tribunal Judge materially erred in law in finding that because no fee had been paid there is no appeal before the Tribunal. In light of the Appellant's instructions to his current counsel that he is not withdrawing his appeal, I remit the appeal for a hearing *de novo* before the First tier Tribunal in order to provide him with the opportunity to put forward his case.

Deputy Upper Tribunal Judge Chapman

21 March 2016