



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

Appeal Number: IA288632014

THE IMMIGRATION ACTS

**Heard at Field House
On 25th May 2016**

**Decision & Reasons
Promulgated
On 9th June 2016**

Before

UPPER TRIBUNAL DEPUTY JUDGE ROBERTS

Between

**MR MOHAMED SADIQUE MAHABOOB BASHA
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr S Bellara (Counsel)

For the Respondent: Mr E Tufan, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant was born on 1st March 1980 and is a citizen of India.
2. On 20th September 2011 the Appellant was granted leave to enter the UK as a student, that leave to expire on 20th September 2013.

3. On 17th October 2013 the Appellant made application for a residence card as confirmation of his right to reside in the UK under European Community law, on the basis of his marriage on 4th August 2013 to Vanessa Monteiro, a Portuguese national exercising treaty rights in the UK.
4. The Appellant's application was refused by the Respondent in a decision dated 11th July 2014. The Respondent was satisfied that the Appellant and his EEA national spouse had contracted a marriage of convenience, for the sole purpose of allowing the Appellant to remain in the UK.
5. The Appellant appealed that refusal to the First-tier Tribunal (Judge Montgomery). In a decision promulgated on 15th October 2015 it dismissed his appeal. The Appellant now appeals, with permission to the Upper Tribunal.
6. Permission to appeal to the Upper Tribunal was granted on this basis. Part of the Respondent's case against the Appellant consists of evidence contained in a record interview which the Appellant gave to a Home Office interviewing officer. Prior to the FtT hearing, a direction was served upon the Respondent to serve a full record of that interview upon the Appellant's representatives.
7. At the commencement of the FtT hearing, the Appellant's representatives made application for an adjournment on the basis that they had not received a copy of the Appellant's Home Office interview as directed by the Tribunal. The judge refused the application and proceeded with the hearing after standing the case down for a short time to allow the Appellant an opportunity to peruse a copy of the document.
8. In granting permission Judge Kelly said the following:

"Having earlier directed the Respondent to serve a full record of a Home Office interview upon the Appellant, it is arguable that the Tribunal's subsequent decision to refuse to adjourn the hearing when the Respondent failed to serve that document (whether in accordance with the terms of the direction or at all) was both inconsistent and unfair. This was arguably material to the outcome of the appeal because the Tribunal went on to place substantial reliance upon what were claimed to be discrepancies between the replies given in that interview by the Appellant and the Sponsor respectively. It is further arguable that the Tribunal failed to have regard to material evidence. In particular whilst the Tribunal made passing reference to the fact that the Appellant had called three witnesses at the hearing, it arguably failed to explain what (if any) weight it attached to that evidence."

Error of Law Hearing

9. I heard submissions from Mr Bellara for the Appellant and Mr Tufan for the Respondent. Mr Bellara kept to the grounds seeking permission and

submitted that the decision of the FtT should be set aside for legal error, on account of the Appellant not being afforded a fair hearing. This was on the basis that it would seem that unfortunately an administrative error had occurred, in that the documents containing the Appellant's Home Office interview, had been sent to his previous representatives rather than his current representatives.

10. In addition three witnesses had attended the hearing to give evidence on behalf of the Appellant. There was no meaningful assessment of their evidence. As the FtT had found that the Appellant was not a credible witness, then in fairness to the Appellant, the decision should have contained an analysis as to why those three witnesses' evidence was not accepted.
11. Mr Tufan on behalf of the Respondent did not disagree that it would seem that the papers were erroneously sent to the Appellant's old representatives rather than his current representatives.
12. I find that the decision of the FtT should be set aside for legal error. I reach that conclusion for the following reasons. I am satisfied that the FtT's decision to refuse to adjourn the hearing when requested to do so, has resulted in the Appellant being deprived of a fair hearing. The Appellant was entitled to have sight of the copy interview record with sufficient time to consider its import. There is a judicial direction to that effect. It would seem that through an unfortunate oversight, the Appellant's past representatives were served with the copy record interview and his current representatives were not. I was informed that the Appellant's current representatives came on record well before the date of the hearing before Judge Montgomery. This oversight resulted in the Appellant's representatives being placed in a position whereby they could not take full instructions on the contents of the interview. The evidence of the Home Office interview forms the core of the case against the Appellant.
13. I am reinforced in my finding that the Appellant did not have a fair hearing by the fact that it seems that the FtT failed to have regard to material evidence. It is recorded at [8] that Tribunal heard oral evidence from three witnesses. I see no proper analysis of their evidence. There is simply a passing reference at [15] which says "*I heard evidence from the three other witnesses, but this evidence did not suffice to resolve the issues or allay the concerns which had arisen.*"
14. As a footnote I see that the FtT keeps referring to the Appellant's wife as if she lived in Scotland. There has never been any suggestion in the papers that the Appellant's wife has lived anywhere other than the London area. It seems that the Tribunal may have lost focus in this appeal.
15. In the circumstances I see no alternative to setting this matter aside for material error. I find that the errors outlined above infect the whole of the decision. Nothing can be preserved from it. The appropriate course is for

this appeal to be remitted to the First-tier Tribunal, for a fresh fact finding hearing, before a judge other than Judge Montgomery.

Notice of Decision

The decision of the FTT is set aside for legal error. The Appellant's appeal is remitted to the First-tier Tribunal (not Judge Montgomery) for a fresh re-hearing.

No anonymity direction is made.

Signed

C E Roberts

Date

08 June 2016

Upper Tribunal Deputy Judge Roberts