Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/37273/2014

THE IMMIGRATION ACTS

Heard at Manchester	**Decision and Reasons Promulgated**
On 3 December 2015	**On 25 January 2016**

Before

UPPER TRIBUNAL JUDGE PLIMMER

Between

MUHAMMAD WAQAS

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the appellant: Mr Rashid, Counsel
For the SSHD: Mr Harrison, Senior Home Office Presenting Officer

DECISION AND DIRECTIONS

1. The appellant is a citizen of Pakistan and is married to a British citizen ('the sponsor'). His appeal against a decision to refuse to grant him leave to remain as a spouse dated 6 September 2014 was dismissed by First-tier Tribunal Judge McAll in a decision promulgated on 10 December 2014. At the hearing before me both representatives agreed that it is difficult to disentangle the issues in dispute before Judge McCall when these two decisions are read together.

2. Both representatives however also agreed that the application dated 4 June 2014 before the SSHD was one based upon the parties' marriage and not their cohabitation. As part of his application the appellant relied upon a marriage certificate dated 27 January 2014. Unfortunately the relevant application form is not available on the Tribunal's file. The SSHD's decision letter dated 6 September 2014 referred to the application for leave to remain as *"a spouse of a settled person"*. The decision however then goes on to deal with the application under the Immigration Rules relevant to partners (paras 8 and 9) before referring to the marriage certificate and stating that this and other evidence *"all appear to show that [the appellant] is in a genuine and subsisting relationship with his British citizen wife Nazam Begum. He therefore would meet the requirements specified in E-LTRP of appendix FM of the immigration rules"* (para 14). When the decision is read as a whole it appears to suggest that but for the concerns regarding the appellant's English language test the relevant rules as a spouse are met. The reference to EX.1 seems to be on the basis that the appellant could not meet the Rules because of the English language test concerns.

3. By the date of the hearing before Judge McAll the SSHD no longer relied upon her concerns regarding the appellant's English language test [8 and 11]. Judge McAll's decision does not however clearly set out which issues remained in dispute as at the date of the hearing. Although the judge refers to the appellant having applied for leave to remain as a spouse [7] and having married at Burnley Registry Office on 12 January 2014 [12] he then went on to find that *"there remains no evidence that the appellant and his sponsor were married or in a relationship akin to a marriage for two years at the date of hearing"* [12] and the Rules are not met *"in respect of the length of [the appellant's] relationship with the sponsor"* [16]. These findings are inconsistent with the SSHD's concession within the decision letter that the parties were married as claimed and in a genuine relationship. These findings are also inconsistent with and difficult to reconcile with the marriage certificate referred to by the judge. There is no requirement under the Immigration Rules for a marriage to be of any particular vintage provided it is valid, genuine and subsisting.

4. As Mr Harrison conceded, Judge McAll has erred in law in requiring the parties to have lived together for a particular length of time when it was accepted that they are married and the application for leave to remain was made on this basis. This amounts to a material error of law. It is difficult to separate this error from the other adverse findings. I am satisfied that Mr Harrison has properly conceded that the decision is infected by a material error of law and should be set aside.

5. Both representatives agreed that this is a case in which fact-finding shall need to commence afresh before the First-tier Tribunal. I have had regard to para 7.2 of the relevant *Senior President's Practice*

Statement and the nature and extent of the factual findings required in remaking the decision, and I have decided that this is an appropriate case to remit to the First-tier Tribunal.

Decision

6. The decision of the First-tier Tribunal involved the making of a material error of law. Its decision cannot stand and is set aside.

7. The appeal shall be remade by First-tier Tribunal *de novo*.

Directions

(1) The appeal shall be reheard *de novo* by the First-tier Tribunal sitting in Manchester (TE: 2 hrs) on the first date available.

(2) Within 28 days the SSHD shall file and serve an updated position statement that sets out: (i) the nature of the application made by the appellant; (ii) under which Rule the application has been considered and / or should be considered; (iii) which requirements of the Immigration Rules it is alleged the appellant is unable to meet; (iv) the position adopted regarding Art 8 of the ECHR outside of the Immigration Rules.

(3) 28 days thereafter the appellant shall file and serve a comprehensive bundle that contains evidence addressing the issues said to remain in dispute.

Signed:

Ms M. Plimmer
Judge of the Upper Tribunal

Date:
3 December 2015