



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

Appeal Number: IA/40375/2014

THE IMMIGRATION ACTS

Heard at Manchester

On 7 March 2016

**Decision & Reasons
Promulgated
On 25th April 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE MAHMOOD

Between

**Mr MUHAMMAD SULMAN
(ANONYMITY DIRECTION NOT MADE)**

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms A. Hashmi of Mamoon Solicitors

For the Respondent: Ms Johnstone, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This matter comes before me pursuant to permission having been granted by Deputy Upper Tribunal Judge Saini dated 3 August 2015. The appeal relates to a decision by First-tier Tribunal Judge Foudy promulgated on 28 March 2015. The Judge at the First-tier Tribunal had dismissed the Appellant's appeal whereby he had applied for a

residence card as the spouse of an EEA national who was exercising treaty rights in the United Kingdom.

2. The Appellant's grounds of appeal can be summarised as follows:
 - (1)The Judge has heavily relied on the Respondent's decision instead of making an independent assessment of the oral and written evidence presented to her;
 - (2)There was extensive personal information such as where there were tattoos on the body but the Judge had not taken these factors into account; and
 - (3)In respect of information relating to the Sponsor's income, there were further documents from the Appellant at the hearing such as a letter from the employer, yet the same was not dealt with by the Judge;
3. At the hearing before me Ms Hashmi said that she relied on the renewal grounds seeking permission to appeal. She highlighted paragraphs 6 and 8 of the Judge's decision. At paragraph 6 the Judge said the burden of proof rests on the Appellant. In the Reasons for Refusal Letter there was nothing from the Respondent to say that this was a marriage of convenience. The hearing had lasted over three hours. The reasoning given only relates to one issue. If one was to look at the evidence in its entirety it was clear that there were only two minor discrepancies despite this extensive questioning.
4. Interpreters were used but both the Appellant and the Sponsor had tried to give evidence in English but instead they used the interpreters. There was an error of law and I was urged to allow the appeal.
5. Ms Johnstone made brief submissions. She said that the grant of permission to appeal was prefaced with reference at paragraph 5 to that any alleged error being academic. Even if there was an error of law it was not material. The Judge's findings were open to her. There were reasons given by the Respondent. There were incompatible and the like. The Judge had considered both sides. The Judge's decision ought to be upheld.
6. In reply Ms Hashmi said that as she had pointed out initially, the Judge had merely given one reason yet there were extensive details from this couple during their evidence. If this was a marriage of convenience then how did the couple get the majority of the questions right?
7. In so far as the financial aspects were concerned, Ms Hashmi said that there were indeed payslips at pages 49, 50 and 52 of the bundle before the Judge. If I concluded that there was an error of law then

that would be in respect of Regulation 6. There has been detailed evidence before the Judge.

8. I invited Ms Johnstone to respond and she said that her submission was that if there was a claim to exercising treaty rights, yet there were said to be bogus transactions and therefore it was not a case in which the Sponsor was exercising treaty rights.
9. Ms Hashmi had the final word and said that the Judge had not given her reasons. Page 57 of the bundle refers to the BACS payment and this contradicts paragraph 10 of the Judge's decision that there was no evidence. As can be seen, there was.
10. I had reserved my decision.
11. Having reflected on the matter and having considered the Record of Proceedings it is clear to me that there was indeed relatively extensive evidence before the Judge. Additionally the bundle before the Judge does contain numerous bank statements, payslips and the like. I note that Ms Hashmi had appeared at the First-tier Tribunal and therefore her assertion that the hearing had lasted some three hours may well be correct. The decision of the Judge is less than three pages long. The first page is, in reality, just the heading of the case.
12. I have reminded myself that a short decision does not equate to one that discloses errors of law. Indeed in some cases writing a short decision can show that it has been written with more care rather than less.
13. At the hearing I had asked many questions of Ms Hashmi as to why the length of the decision and an apparent failure to deal with every point of itself was enough to show an error of law. I was not initially inclined towards accepting Ms Hashmi's submissions.
14. Having considered the matter in full though, I have come to the conclusion that it is plain to see, when considering the original bundle of documents before the Judge and the evidence that the Judge, that there is a material error of law. The Judge has materially erred in her assessment of the evidence because she has not set out or balanced the very many questions that the Appellant and Sponsor got right as against the one thing that they did not. Similarly, the Judge's findings in respect of the bank statements, payslips and BACS payments appears to be wrong. The bundle of documents before the Judge shows that these aspects were dealt with by the Appellant. At the very least, in his written evidence.
15. I therefore conclude that there is a material error of law for lack of reasoning and because even those limited findings, go against the evidence submitted to the Judge.

16. There will be a rehearing at the First-tier Tribunal. None of the findings of the Judge shall stand.

Notice of Decision

The decision of the First tier Tribunal Judge contains a material error of law and is therefore set aside.

An anonymity direction is not made.

Signed

Date: 21 March 2016

Deputy Upper Tribunal Judge Mahmood