



Upper Tribunal  
(Immigration And Asylum Chamber)

Appeal Number: IA/45074/2014

**THE IMMIGRATION ACTS**

Heard at Field House  
On 3rd May 2016

Decision and Reasons Promulgated  
On 16<sup>th</sup> May 2016

Before

DEPUTY UPPER TRIBUNAL JUDGE MAILER

Between

MR GERRITT KEITH GEORGE DIRCHING CARDONES  
(NO ANONYMITY DIRECTION MADE)

**Appellant**

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

**Respondent**

**Representation**

For the Appellant: In person  
For the Respondent: Mr S Walker, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant is a national of the Philippines, born on 5 March 1972. His appeal against the decision of the respondent refusing his application for a residence card as the spouse of an EEA citizen under the Immigration (EEA) Regulations 2006 ("the 2006 Regulations"), was dismissed by the First-tier Tribunal in a decision promulgated on 5 June 2016.
2. In a decision dated 19 February 2016, the Upper Tribunal found that the decision of the First-tier Tribunal involved the making of an error of law and was set aside. The Judge, having accepted that the appellant and his partner may have spent time

together for meals and also spent time together at the same property, did not provide any reasons as to why in the circumstances this led to the finding that theirs is not a “genuine” or “durable” relationship.

3. Nor did the Judge properly direct himself in accordance with the relevant authorities when assessing whether the appellant's marriage was one of convenience.
4. It was directed that the Upper Tribunal would re-make the decision at a hearing on a date to be arranged.
5. The resumed hearing took place on 3 May 2016.
6. On the morning of the hearing the appellant's former solicitors, Universal Solicitors, sent the Tribunal a fax headed “Withdrawal of Instruction.” The letter is dated 29 April 2016. The solicitors stated that their office had tried to contact the appellant on several occasions in relation to the appeal hearing. Unfortunately he did not respond. In the circumstances, “we are unable to take any further instructions.” They stated that they would therefore not represent the appellant at the hearing scheduled for 3 May 2016.
7. On 3 May 2016 the appellant attended the hearing in person. I drew his attention to the letter that the Tribunal had received. He confirmed that its contents are true.
8. He then informed the Tribunal that he and his partner have now separated. They went to solicitors last week. He said that “things then fell apart.” It was his wife who wanted to separate. She left him a week ago. He does not know where she is.
9. He does not work and has failing health.
10. Mr Walker submitted that the whole basis of his claim that they had been in a genuine and subsisting relationship has now fundamentally changed. They have now separated. He pointed out that the appellant's partner did not attend the earlier hearing which had been scheduled on 7 April 2016. On that occasion it was asserted that the sponsor was not in the UK, having gone to visit her sick mother abroad.
11. Mr Walker stated that although the decision of the First-tier Tribunal has been set aside, the respondent persists in her refusal. It is still asserted that they do not have a durable relationship. This is clearly the position now as there is no longer any relationship. The appeal should be dismissed.
12. Mr Cardones accepted that his wife is no longer supporting his case. He said that “she has given up on the relationship.”
13. He stated that he has various health problems which he wants considered by the secretary of state.

14. I afforded the appellant the opportunity to contact his solicitors by telephone. The case was stood down. He returned and informed the Tribunal that he had spoken to his solicitors. He has been advised to make an application in due course based on "humanitarian considerations."

**Assessment**

15. Having regard to the circumstances disclosed, I find that the appellant and his wife are not in a durable or any relationship. The circumstances have fundamentally changed following the decision of the First-tier Tribunal and the subsequent finding of an error of law in February 2016.
16. I find that their relationship is no longer existing. Accordingly, the appellant is not entitled to be issued a residence card under the 2006 Regulations.

**Notice of Decision**

The appellant's appeal is dismissed.

No anonymity direction is made.

Signed

Date 16 May 2016

Deputy Upper Tribunal Judge C R Mailer