



IAC-AH-DP-V1

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

Appeal Number: IA/46273/2014

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 19 April 2016**

**Decision & Reasons Promulgated  
On 28 April 2016**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE HANBURY**

**Between**

**MR MUHAMMAD AZEEM QADIR  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr Majeed, a Legal Representative

For the Respondent: Mr D Clarke, a Home Office Presenting Officer

**DECISION AND REASONS**

**Introduction**

1. The appellant is a Pakistani national born on 5 March 1985. He applied for a residence card on the basis that he wished to reside in the EEA with Joanna Pieczkowska, a Polish national. They have a daughter together called Jasmin Maria Qadir who was born on 2<sup>nd</sup> December 2014.

2. The respondent refused the application for an EEA residence card as confirmation of the appellant's rights to reside as the spouse of an EEA national (i.e. Ms Pieczkowska) on 6 November 2014. The appellant appealed that decision to Judge Haria (the Immigration Judge) but Judge Haria dismissed the appeal on 28 September 2015.
3. The appellant appealed the decision and Designated Judge Shaerf decided that there was, arguably, a material error in the Immigration Judge's decision. He identified that the Immigration Judge had failed to consider the fact that the respondent had not disclosed a record of interview on which the reasons for refusal were based. That interview had been conducted on 30 October 2014. The answers the appellant gave in interview were said by the respondent to be inconsistent with those that Ms Pieczkowska gave in an interview, presumably, at the same time.
4. Additionally, the Immigration Judge appeared to Judge Shaerf to have possibly misapplied the burden of proof in paragraph 23 of the decision where she said that the respondent had discharged the evidential burden owing to the fact that there were inconsistent answers between the two interviewees. Mr Iqbal, who appeared for the appellant at the hearing before the FtT, pointed out that the records of interview had not been produced but the Immigration Judge considered that no evidence had been produced that the appellant had actually requested such documents. Both parties were under a duty to disclose them under Rule 2 of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014. This placed an obligation on the parties to cooperate with the Tribunal and enable the Tribunal to deal with cases fairly and justly in the circumstances. The Immigration Judge had dismissed the appeal but Judge Shaerf considered that the approach was arguably wrong.

### **The Hearing**

5. Following the grant of permission on 29 February 2016 on 7 March 2016 the respondent had sought to maintain the decision of the FtT. However, when the matter came before me the respondent was represented by Mr Clarke, an experienced Presenting Officer. Mr Clarke pointed out to the Tribunal that there had not been adequate consideration of the oral evidence in addition to a failure to consider the interview records, which had, he accepted, not been disclosed. This was, unfortunately, an error which could not be rectified before the Upper Tribunal. He accepted an obligation on the part of the respondent to disclose the interview records and accepted this obligation had existed on his principal throughout. Because the error was so fundamental it was necessary for the matter to be remitted to the FtT.
6. Unsurprisingly, Mr Majeed, did not disagree with this course of action.

7. Accordingly, I decided that there had been a material error of law in the decision of the FtT and acceded to the request of both parties to remit the matter to that Tribunal for a fresh hearing at which none of the findings would be preserved. The hearing was to be before a judge other than the Immigration Judge. Directions were made, subsequent to the departure of Mr Majeed, that such hearing was to be attended by a Polish interpreter to assist the sponsor to give evidence. However, I direct that the parties are to notify the FtT of their interpreter requirements within seven days of being notified of the transfer and of any other additional directions they require.
8. All further directions will be issued by the FtT.

### **Notice of Decision**

Having found a material error of law in the decision of the FtT that decision is set aside. It is remitted to the FtT to make a fresh decision following a hearing before a judge other than Judge Haria. None of the findings of fact are preserved so that the hearing is to be “de novo”.

### **Directions**

I direct:

- (1) That the matter is to be remitted to the FtT.
- (2) That the hearing is to be before a judge other than Judge Haria.
- (3) That a Polish interpreter is to be booked for the hearing.
- (4) That in the event that an additional interpreter is to be required or the Polish interpreter is not needed the FtT is to be notified within seven days of transfer.
- (5) All further directions are to be issued by the FtT.

No anonymity direction is made.

Signed

Date

Deputy Upper Tribunal Judge Hanbury