



Upper Tribunal

(Immigration and Asylum Chamber)

Appeal Number: IA/50721/2014

IA/19562/2015

THE IMMIGRATION ACTS

Heard at Field House, London

Decision & Reasons Promulgated

On 7th March 2016

On 31st March 2016

Before:

DEPUTY UPPER TRIBUNAL JUDGE MCGINTY

Between:

MS DANIELA LIANE BONAVENTURA

MR MUHAMMAD ZEESHAN RANA

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Miss Dogra (Counsel)

For the Respondent: Miss Brocklesby-Weller (Home Office Presenting Officer)

DECISION AND REASONS

1. This is the Appellants' appeal against the decision of First-tier Tribunal Judge Abebrese promulgated on the 6th October 2015, in which he dismissed to the Appellants' appeal under the Immigration (EEA) Regulations.

2. Permission to appeal has been granted by Upper Tribunal Judge Bruce on the 10th January 2016 on the grounds that it was arguable that in reaching the decision of the First-Tier Tribunal failed to have regard to material evidence and failed to give reasons for its conclusion. It was further stated that it was arguable that the determination failed to engage with the merits of the decision taken against the First Appellant Ms Bonaventura and that the notice of decision had indicated that she faced removal by reference to Regulation 19 (3) on that ground that she had ceased to have the right to reside in the UK under the Immigration (EEA) Regulations 2006 and there has been no findings as to whether or not she was exercising Treaty Rights, and that the determination simply stated that she had "been made a party to these proceedings" because of the allegation that the marriage was a sham.
3. Although it is stated by Upper Tribunal Judge Bruce that there were no findings in respect of whether or not Miss Bonaventura was still exercising Treaty Rights, Ms Brocklesby-Weller on behalf of the Secretary of State and Ms Dogra on behalf of the Appellants agreed that within the IS.151A Notice given to Ms Bonaventura dated the 15th December 2014, the reasons set out were specifically that she had attempted to enter into a sham marriage with Muhammad Zeeshan Rana, and that the Judge was therefore correct in considering her appeal on the basis of whether or not she had entered into a sham marriage.
4. However, it was conceded, quite properly by Miss Brocklesby-Weller on behalf of the Respondent, that despite the contents of the Respondents Rule 24 reply, the decision of First-tier Tribunal Judge Abebrese did contain a material error of law, in that it is not clear from the decision of First-tier Tribunal Judge Abebrese, that he properly considered all of the evidence before him. Miss Brocklesby-Weller conceded that the First-Tier Tribunal Judge predominantly relied upon what had been stated by the Respondent as being the errors in the first interviews conducted with the Appellants on the 15th December 2014, and there was no specific reference to the second interview conducted on the 15th April 2015. Further she agreed that it was not clear from the

decision that the First-Tier Tribunal Judge had properly considered the statements filed on behalf of the Appellants and the other supporting documents filed in support of the appeal, none of which were specifically referred to in any detail within the determination. She therefore conceded that there was seemingly a failure to take account of material evidence, and that if the First-Tier Tribunal Judge had taken account of this evidence, he had not specifically set out any consideration of the second interview nor had he specifically set out his consideration of the statements or supporting documents in relation to his findings, despite having made reference to them at [89] of the decision.

5. In light of these concessions I do find that the Judge has not properly considered all of the material evidence before him, and that he either has not taken account of the second interview, together with the statements and supporting documents filed by the Appellant, or if he has he has inadequately explained why they were not relevant to his findings at [13 and 14].
6. I therefore set aside the decision of First-tier Tribunal Judge Abebrese, and remit the case back to the First-Tier Tribunal of rehearing before any First-tier Tribunal Judge other than First-tier Tribunal Judge Abebrese.

Notice of Decision

The decision of First-tier Tribunal Judge Abebrese containing, as had been agreed between the parties, does contain a material error of law, such that the decision of First-Tier Tribunal Judge Abebrese is set aside;

The case is remitted back to the First-Tier Tribunal for rehearing *de novo*, before any First-tier Tribunal Judge other than First-tier Tribunal Judge Abebrese.

Signed

Dated 7th March 2015

R McGinty

Deputy Judge of the Upper Tribunal McGinty