



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

Appeal Number: IA/00830/2016

THE IMMIGRATION ACTS

**Heard at Field House
On 16 August 2017**

**Decision Promulgated
On 17 August 2017**

Before

Upper Tribunal Judge Southern

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

SAID AITJILAL

Respondent

Representation:

For the Appellant: Mr S. Staunton, Senior Home Office Presenting Officer

For the Respondent: Mr A. O. Akindele, counsel instructed by Defank, solicitors

DECISION

1. The Secretary of State for the Home Department ("SSHD") has been granted permission to appeal against the decision of First-tier Tribunal Judge Phull who, by a determination promulgated on 21 April 2017, allowed Mr Aitjilal's appeal against a decision of the SSHD, made on 25 January 2016, to revoke the residence card that had been issued to him as the spouse of an EEA national. The SSHD gave two reasons for the revocation decision. First, it was concluded that Mr Aitjilal's marriage was one of convenience and second, in view of his criminal convictions, it was considered that he was a professional criminal who represented a

genuine and sufficient threat to one of the fundamental interests of society. Mr Aitjilal had previously been made subject to a deportation order and his appeal against the making of that deportation order was dismissed in August 2013. Therefore, the residence card was revoked with reference both to Regulation 21(5) and 21B(1)(d) of the Immigration (EEA) Regulations 2006.

2. The relevant facts are, of course, well known to both parties and for present purposes the following summary will suffice. Mr Aitjilal is a citizen of Morocco. On 17 September 2003, he was married to a French national by the name of Ms Baaziz and on that basis he was issued with a residence card. He was issued with a permanent residence card in June 2010. However, in 2006 he had entered into a relationship with a partner of Moroccan nationality, Ms Boutarf, who was present on the basis of a marriage to a Portuguese national. Together they had four children, two of whom were born during the currency of the appellant's marriage to Ms Baaziz, from whom he is now divorced. That led the SSHD to conclude that the marriage to Ms Baaziz was one of convenience to enable Mr Aitjilal to remain in the United Kingdom when otherwise he would have no basis of stay.
3. As for Mr Aitjilal's criminal offending, the SSHD had referred to what had been said in the determination dismissing the earlier appeal against deportation. There, it was observed that Mr Aitjilal had committed 36 offences. These included 12 for fraud and kindred offences and 12 for theft and kindred offences. Those offences included possession and misuse of identity documents.
4. The judge allowed the appeal because he found that Mr Aitjilal's marriage to Ms Baaziz, the French national, was not a marriage of convenience. But, in allowing the appeal, the judge made no reference whatever to Mr Aitjilal's offending and there is nothing to indicate that he engaged at all with the fact that the decision was taken also on the basis of his propensity to commit criminal offences. Realistically, Mr Akindele conceded that it was a material error of law for the judge to have failed to address that issue and he recognises and accepts, correctly, that the appeal will have to be determined afresh. To that extent, there is a consensus between the parties and I need say no more about it.
5. However, Mr Akindele submits that the finding of fact made by the judge that the Mr Aitjilal's marriage was not one of convenience should be preserved, as that is a distinct matter unrelated to the question of his propensity to commit criminal offences and so to represent a genuine,

present and sufficiently serious threat affecting one of the fundamental interests of society.

6. Mr Staunton submitted that the decision of the judge should be set aside in its entirety. The matters overlooked by the judge of the significant record of offending for offences of dishonesty are, he submits, highly relevant to any assessment of the honesty and integrity of Mr Aitjilal's decision to be married to an EEA national and his reasons for choosing to do so. Therefore, he argues, in ignoring altogether the fact and nature of that offending the judge has left out of account a material consideration and so has made a material error of law.
7. I have no doubt at all that Mr Staunton is correct. The decision under challenge was one founded upon both issues and it is artificial and inappropriate to seek to divide it up into two separate decisions that can be assessed independently of the other. Therefore, it is not appropriate to preserve any finding of fact made by the judge. His decision will be set aside and the appeal will be remitted to the First-tier Tribunal to be determined afresh.

Summary of decision:

8. The appeal to the Upper Tribunal is allowed to the extent that the determination of First-tier Tribunal Judge Phull is set aside in its entirety. No findings of fact are to be preserved. The appeal is remitted to the First-tier Tribunal to be determined afresh

Signed



Upper Tribunal Judge Southern

Date: 16 August 2017