



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

Appeal Number: IA181402015

THE IMMIGRATION ACTS

**Heard at Field House
On 24 May 2017**

**Decision & Reasons Promulgated
On 2 June 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAPMAN

Between

**MR NAZIM AHMED
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Z Khan, Londonium Solicitors

For the Respondent: Ms Z Ahmed, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a national of Bangladesh born on 8 February 1981. He made an application for a residence card based on his marriage to an EEA national Sponsor, Marie-Louise Bertin, a French national of Filipina origin. This application was refused by the Respondent in a decision dated 29 April 2015 following an application made on 18 November 2014. The Respondent did not accept having interviewed the Appellant and Sponsor on 20 April 2015 that the marriage was genuine and it was asserted that

pursuant to Regulation 2 of the Immigration (EEA) Regulations 2006 it was a marriage of convenience.

2. The Appellant appealed and his appeal came before First-tier Tribunal Judge Maller for hearing on 12 July 2016. It was then adjourned part-heard until 8 September 2016 on the basis that the Sponsor had some difficulty understanding the questions and a Tagalog interpreter was requested for the adjourned hearing.
3. In a Decision and Reasons promulgated on 1 November 2016, the Judge dismissed the appeal on the basis that he did not find the Appellant's evidence to be credible and he concluded that the Respondent had discharged the burden of proving that the marriage was one of convenience.
4. An application for permission to appeal to the Upper Tribunal was made on 14 November 2016. The grounds in support of the application submitted that the judge's decision was vitiated by material errors of law on the grounds of procedural irregularity and unfairness as the Respondent failed to disclose material documents and evidence, namely the interviewer comments, *cf.* Miah (interviewer's comments: disclosure: fairness) [2014] UKUT 00515 (IAC).
5. Permission to appeal was granted in respect of that ground by First-tier Tribunal Judge Andrew on 6 April 2017.

Hearing

6. At the hearing before me, Ms Ahmed on behalf of the Secretary of State, indicated that the interviewer's comments which are otherwise known as the form ICV.4605 had been prepared in respect of this case but had not in fact been served and in light of that omission she conceded that the appeal hearing had been procedurally unfair. Ms Ahmed served a copy of the ICV.4605 on both the Upper Tribunal and on Mr Khan representing the Appellant and the Sponsor.
7. In light of Ms Ahmed's helpful concession I find that the decision promulgated on 1 November 2016 is vitiated by error of law *viz* the absence of form ICV.4605 in light of the decision in Miah (op. cit.).

Notice of Decision

I remit the appeal for a hearing *de novo* before the First-tier Tribunal.

I make no anonymity order.

Standard directions apply.

Signed Rebecca Chapman

Date 1 June 2017

Deputy Upper Tribunal Judge Chapman