



**Upper Tribunal
(Immigration and Asylum Chamber)
IA/34458/2015**

Appeal Number:

THE IMMIGRATION ACTS

Heard at Field House

Decision & Reasons

On 24th October 2017

Promulgated

On 4th December 2017

Before

DEPUTY UPPER TRIBUNAL JUDGE MAHMOOD

Between

MR FAISAL HANIF
(ANONYMITY DIRECTION NOT MADE)

Respondent

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

Representation:

For the Appellant: Mr Sharma of Counsel, Sky Solicitors Ltd
For the Respondent: Mr McVeety, Home Office Presenting Officer

DECISION AND REASONS

1. The Secretary of State appeals with permission against the decision of First-tier Tribunal Judge Majid promulgated on 3rd March 2017. For ease, I shall continue to refer to Mr Hanif as the Appellant although it is the Secretary of State who brings this appeal. The judge had allowed the Appellant's appeal against the Secretary of State's decision to refuse him a residence card as confirmation of a right to reside in the United Kingdom.
2. The Secretary of State's decision is somewhat detailed, but in part it made clear in saying as follows:

“You have applied for a residence card as confirmation of a right of residence as the spouse of an EEA national exercising treaty rights in the United Kingdom. However, your marriage was identified as being potentially one of convenience and you failed to respond to a questionnaire.”

Various matters were set additionally in a reasons for refusal letter taking into account documentation which had been submitted.

3. This morning, the Secretary of State raises several grounds and when permission was granted it was said as follows by First-tier Tribunal Judge Ford, “The Respondent seeks permission to appeal. It is arguable that the Tribunal erred in demonstrating apparent bias in its decision, in particular from paragraph 18 onwards and it was said that there was an arguable material error of law”.
4. The Secretary of State’s grounds, detailed as they are, really need consideration in my judgment of paragraph 5 which provides as follows:

The judge has made no relevant findings in respect of the Secretary of State’s case that the marriage is one of convenience. The Presenting Officer’s hearing minute notes that the spouse of the Appellant did not attend the hearing and was a point made in respect of the overall allegation of deception. The judge does not address this at all.

4. In his submissions before me today Mr McVeety was concise but to the point and said that although all of the grounds were relied on ultimately the judge did not make any proper decision in relation to findings which were required, so that was the most important issue. He said that perhaps the reason was connected to the political statements being made by the judge. But ultimately Mr McVeety had said that he relied on the ground that there was a fundamentally flawed decision. He accepted that there was no compliance with the Presidential Directions in relation to the filing and service of unreported decisions.
5. Mr Sharma in his submissions said that all that he could on behalf of the Appellant and he grouped his submissions in three responses. Firstly, the issue of bias, secondly the issue in relation to the 2006 Regulations and thirdly whether or not relevant findings or factors had been taken into account. Mr Sharma said that there were some strange comments from the judge, but ultimately if one looked to the decision as a whole, where there were strange comments being made by the judge or even political comments they were either irrelevant, for example reference to the Human Rights Act and a Human Rights Act claim or alternatively it was clear the judge had made sufficient findings.

6. Now, I am aware that there has been a reported decision of the Upper Tribunal in respect of this First-tier Tribunal Judge, but I have sought to look at the matter independently of that. However, despite doing that, in my judgment, the real difficulty with the judge's decision is that there simply were not sufficient findings to deal with the issues which had been raised by the Respondent. It may well be that the judge heard sufficient evidence to deal with those concerns but the problem is that the decision does not deal with them in a way which fairly sets out the Secretary of State's concerns and in a way which adequately then reasoned why the decision went against the Secretary of State. Both parties are entitled to know why they won or lost. In my judgment it is quite clear that in this instance there is a fundamental flaw in relation to the requirement to ensure justice is done to both sides.
7. In the circumstances, the decision of the First-tier Tribunal Judge has to be set aside. None of the current findings can stand. There will be a rehearing at the First-tier Tribunal before a judge other than Judge Majid and that will take place at Taylor House.

No anonymity direction is made.

Signed
Abid Mahmood

Date: 24 October 2017

Deputy Upper Tribunal Judge Mahmood