



Upper Tribunal

(Immigration and Asylum Chamber)

Appeal Number: EA/06404/2016

**THE IMMIGRATION ACTS**

Heard at Field House

On 20 March 2018

Decision & Reasons Promulgated

On 22 March 2018

Before

Deputy Upper Tribunal Judge MANUELL

Between

Mr AMRO MAHMOUD SOLIMAN MOUSTAFA ELRAEY

(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: No appearance

For the Respondent: Ms J Isherwood, Home Office Presenting Officer

**DETERMINATION AND REASONS**

*Introduction*

1. The Appellant appealed with permission granted by First-tier Tribunal Judge Gibb on 25 January 2018 against the decision and reasons of First-tier Tribunal Judge C J Woolley who had dismissed the Appellant's EEA retained rights appeal in a decision and reasons promulgated on 25 October 2017.
2. The Appellant is a national of Egypt. He had claimed that he had been married to an EEA national, an Italian national, between 7 July 2011 and 28 August 2015. His wife had been a qualified person at all material times. The Respondent's position was that the marriage was one of convenience only and so could not be recognised. In any event the Appellant had provided insufficient evidence that his wife had been a qualified person as at the date of the decree absolute. The judge found that the Respondent had discharged the legal and evidential burden applicable, and that the marriage was in effect a sham. The judge also found that the Appellant had failed to prove that his former spouse had exercised treaty rights for five years, and was ineligible on that basis as well.
3. Permission to appeal was granted to the Appellant by First-tier Tribunal Judge Gibb (with strong reservations as to several of the grounds advanced) because he considered that the judge had arguably erred by failing to appreciate that the nature of the Respondent's evidence as to the substance of the marriage was retrospective and indirect. It was also arguable that the judge had erred when finding that 5 years' residence was required: see Amos [2011] EWCA Civ 552.
4. Standard directions were made by the tribunal. A rule 24 notice opposing the appeal was filed by the Respondent.
5. When the appeal was called on for hearing, there was no appearance by the Appellant or his representative nor any application for an adjournment in consequence. Having satisfied itself that notice of the time, date and place of the hearing had been duly served on the Respondent and his representative, the tribunal decided that it should

proceed in the Respondent's absence and that it was just and fair to do so.

*Submissions*

6. Ms Isherwood for the Respondent submitted that there was no material error of law. The judge had given proper reasons for finding that the burden of proof on the Respondent had been discharged and that the relevant marriage was one of convenience. Whether the judge had failed to apply Amos (above) was not important. The onwards appeal should be dismissed.

*Discussion – no error of law*

7. No further communication had been received from the Appellant nor any representative by the time this determination was prepared. The tribunal accepts the submissions made by Ms Isherwood.
8. The Amos [2011] EWCA Civ 552 point is something of a distraction. For reasons which are unclear, the very experienced judge relied on an outdated understanding of the required length of residence for retained rights purposes, based on the overturned decision in OA (EEA – retained rights of residence) Nigeria [2010] UKAIT 00003. The Appellant's counsel had concurred with that approach at the first instance hearing. The Amos point was ungraciously taken against the judge in [19] of the permission to appeal application, but it is correct.
9. Nevertheless, error of law though that was, it was not in the event material as it had no bearing at all on the judge's secure primary finding, namely that the marriage was entered into for improper reasons, and had no substance at all. Far from relying solely on the *prima facie* case advanced by the Respondent, the judge examined the whole of the evidence meticulously. He gave full and detailed reasons for finding that the marriage was nothing more than a sham: see [24] onwards of the decision and reasons.

10. Those findings destroyed any case which the Appellant had put forward. There was thus no material error of law in the decision and the onwads appeal must be dismissed.

**DECISION**

The onwads appeal is dismissed

The original decision and reasons stands unchanged

**Signed**

**Dated 20 March 2018**

**Deputy Upper Tribunal Judge Manuell**