



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

Appeal Number: EA/04988/2017

THE IMMIGRATION ACTS

**Heard at Field House
On 29th January 2019**

**Decision and Reasons Promulgated
On 31st January 2019**

Before

UPPER TRIBUNAL JUDGE COKER

Between

**SHER RAHMAN SAEEDI
(anonymity direction not made)**

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr K Smyth, Kesar & Co solicitors

For the Respondent: Ms K Everett, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant's appeal against the decision by the respondent to refuse to issue him with a residence card as a family member because, the respondent alleged, the appellant had entered into a marriage of convenience, was dismissed by First-tier Tribunal Judge N M K Lawrence for reasons set out in a decision promulgated on 23rd May 2018.
2. Permission to appeal was sought and granted on the grounds

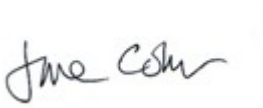
- Prevented oral evidence that was pertinent to the question at the heart of the appeal from being given;
 - The judge had incorrectly characterised witness evidence as 'expert' evidence and then discounted it in its totality for that reason;
 - Failed to give adequate reasons for declining to place 'much weight' on the appellant's witnesses evidence;
 - Failing to give any or any adequate reasons for finding the respondent had discharged the burden of proof that the marriage was a marriage of convenience;
 - Failed to give reasons why he disregarded evidence of cohabitation;
3. The strongest ground was the claimed failure of the judge to permit pertinent questions of witnesses who were called to testify to the couple's relationship.
 4. Ms Everett confirmed that there appeared to be a fundamental procedural error by the First-tier Tribunal in curtailing what could be pertinent evidence, particularly when the respondent was not represented before the First-tier Tribunal. Although the other pleaded grounds are not, in themselves particularly strong identifiers of error, in the context of the appeal as a whole this decision has failed to receive, and address evidence as required.
 5. There are errors of law by the First-tier Tribunal judge such that the decision is set aside to be re-made. no findings retained.
 6. The appellant has been deprived of a fair hearing and any findings made by the First-tier Tribunal cannot stand. The scheme of the Tribunals Court and Enforcement Act 2007 does not assign the function of primary fact finding to the Upper Tribunal.
 7. I conclude that in these circumstances the decision should be remitted to the First-tier judge to determine the appeal.

Conclusions:

The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.

I set aside the decision and remit the appeal to be heard afresh by the First-tier Tribunal.

Date 29th January 2019



Upper Tribunal Judge Coker