



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

Appeal Number: EA/06008/2018

THE IMMIGRATION ACTS

**Heard at Field House
On 3 July 2019**

**Decision & Reasons Promulgated
On 05 August 2019**

Before

UPPER TRIBUNAL JUDGE CRAIG

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**MR ISHTIAQ KHAN
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant (Secretary of State): Ms S Cunha, Senior Home Office
Presenting

Officer

For the Respondent (Mr Khan): Mr A Gilbert, Counsel, instructed by Rahman
&

Company Solicitors

DECISION AND REASONS

1. This is the Secretary of State's appeal against the decision of First-tier Tribunal Judge Norton-Taylor. However, for ease of reference, I shall throughout this decision refer to Mr Khan, who was the original appellant as "the claimant" and to the Secretary of State, who was the original respondent, as "the Secretary of State".

2. The claimant is a national of Pakistan who was born on 4 July 1990. He appealed against the Secretary of State's decision, made on 23 August 2018 refusing to issue him with a residence card under the Immigration (EEA) Regulations 2016. The basis of his application was his marriage to a Polish national; the basis of refusal was that the Secretary of State considered that the marriage, which has subsequently broken down, was a sham marriage.
3. This appeal was heard by First-tier Tribunal Judge Norton-Taylor (as he then was) on 22 March 2019 at Taylor House and in a Decision and Reasons promulgated shortly thereafter on 5 April 2019 the appeal was allowed.
4. As the judge noted in his decision, the claimant had made previously three unsuccessful EEA applications, and this one, the one currently under appeal was his fourth. What the judge seemed to have been unaware of, however, was that in respect of at least one of the previous refusals the claimant had appealed and his appeal had been dismissed by First-tier Tribunal Judge Telford in a decision which was promulgated on 3 February 2017, following a hearing before him at Hatton Cross on 9 January 2017. Again, a matter of which the judge was seemingly unaware was that this application had been based on the same marriage to the Polish lady and Judge Telford had dismissed the appeal against the refusal of permission on the basis that he was satisfied that it was a sham marriage and he gave reasons within his decision why this was so. This decision was not referred to by either of the parties before Judge Norton-Taylor and although I have seen a copy it is not entirely clear whether or not it was in the file which was then before that judge.
5. There is another difficulty with regard to this appeal which is that by the time it came before Judge Norton-Taylor, although the Secretary of State was claiming that inconsistent answers had been given by the claimant and his "wife" within interview, the interview records were not before the judge in hard copy and he perfectly properly refused an application made at the date of hearing for the Secretary of State to be allowed to introduce evidence of these interviews by means of what was on the Secretary of State's representative's Smart phone during the hearing. However, on behalf of Mr Khan, Mr Gilbert entirely properly and consistent with his duties as Counsel informed the court that he in fact had a copy now of these interview notes and they had apparently been before First-tier Tribunal Judge Howard who had also considered this matter at some stage. For reasons which will probably never be clear the interview notes, which obviously had been produced by the Secretary of State at some stage and had been in the court file must have been removed from the court file so that they were not before Judge Norton-Taylor.
6. It is common ground between the parties that the failure of whoever it was to ensure that the material which had been produced in this case was put before the judge (that is both the prior decision of Judge Telford and also the interview notes) was sufficiently serious as to be a procedural errors

amounting to a material error of law. In the judgment of this Tribunal the parties are right so to agree. Clearly the starting point for any decision maker must, having regard to *Devaseelan*, be Judge Telford's previous decision and because the judge was apparently unaware of this previous decision that did not happen. Also, the interview notes were clearly relevant, and should have been before the judge but were not.

7. Because the claimant will want to call about five witnesses and there will need to be a complete rehearing of the appeal both parties are agreed that it would be appropriate to remit this case back to the First-tier Tribunal and I will so order.

Decision

I set aside the decision of First-tier Tribunal Judge Norton-Taylor as containing a material error of law (being procedural irregularities as referred to above) and direct that the appeal now be remitted back to Taylor House for rehearing before any First-tier Tribunal Judge other than Judges Telford, Howard or Norton-Taylor, for a de novo hearing with no findings of fact retained.

No anonymity direction is made.

Signed:

A handwritten signature in black ink, appearing to read 'Ken Craig', is written over a light blue rectangular background.

Upper Tribunal Judge Craig

Dated: 5 July 2019