



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

Appeal Number: HU/06009/2019

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 2 September 2019**

**Decision & Reasons Promulgated  
On 25 October 2019**

**Before**

**UPPER TRIBUNAL JUDGE PERKINS**

**Between**

**ZEESHAN [W]**

(anonymity direction not made)

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr S Akhtar, solicitor from SBM Solicitors

For the Respondent: Mr E Tufan, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. This is an appeal against a decision of the First-tier Tribunal dismissing on human rights grounds an appeal against the decision of the Secretary of State refusing the appellant leave to remain.
2. At its heart this is a case of a person who is alleged to be an ETS cheat and who wishes to remain on the basis of his marriage. The First-tier Tribunal made unsatisfactory findings of fact. The evidence did not support the conclusion and I set aside the decision of the First-tier Tribunal.
3. I set aside the decision of the First-tier Tribunal.

4. I then have to decide what to do next. There is an application by the Secretary of State to adduce the generic evidence which in simple terms ought to have been before the First-tier Tribunal. Mr Akhtar opposed the application. Clearly Mr Akhtar would prefer it if that evidence was not admitted. It is to his client's disadvantage because it prevents him taking advantage of a hole in the evidence that the Secretary of State had created, but there has to be a rehearing and both sides can apply to adduce further evidence and I find it is right to admit the evidence that ought to have been produced on the first occasion, even though it will no doubt cause vexation to the appellant. It is not unfair that the case is determined on the available evidence and I therefore admit that evidence.
5. I then have to decide what to do with it. The case was heard at Newport but the appellant identifies himself as the husband of a person whose case is to be heard at Hatton Cross on related matters on a day in October. I direct the case be heard again in the First-tier Tribunal.
6. I invite the First-tier Tribunal to note that the appellant's wife is named Zehra [Z] and her appeal number is [~] and her case is listed for a CMR hearing at Hatton Cross on 10 October 2019.
7. I direct that these papers be sent to Hatton Cross and I invite the First-tier Tribunal to consider linking them at or before that hearing for everyone's convenience, but that is not a matter for direction.
8. Mr Akhtar asked for costs. I do not propose to rule on the costs at this stage, but I record the fact that the application was made and encourage both parties to give thought to presenting it in the best possible way when the case is heard again in the First-tier Tribunal.

**Notice of Decision**

9. To be clear I find the First-tier Tribunal erred in law. I set aside the decision and direct that the case be heard again in the First-tier Tribunal.



Signed

Jonathan Perkins

Judge of the Upper Tribunal

Dated 24 October 2019