



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

Appeal Number: EA/00495/2019

THE IMMIGRATION ACTS

**Decision on Papers (P)
On 15 June 2020**

**Decision & Reasons Promulgated
On 9 July 2020**

Before

UPPER TRIBUNAL JUDGE KAMARA

Between

MR SOHAIB SATTAR
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DECISION AND REASONS

Introduction

1. This is an appeal against the decision of First-tier Tribunal Judge Behan, promulgated on 13 September 2019. Permission to appeal was granted by Upper Tribunal Judge Owens on 13 March 2020.

Anonymity

2. No direction has been made previously, and there is no reason for one now.

Background

3. The appellant applied for a Residence Card as the family member of an EEA national. That application was refused on 14 January 2019. The

decision letter made reference to inconsistencies in the responses given by the appellant and his spouse during a marriage interview. Three specific issues were identified.

The decision of the First-tier Tribunal

4. The appellant gave evidence to the First-tier Tribunal as did his spouse. The judge considered there to be force in the submission that the alleged inconsistencies referred to in the decision letter could not be considered as such. The judge nonetheless concluded that the appellant and his spouse were in a marriage of convenience.

The grounds of appeal

5. The sole ground of appeal argued that the judge misdirected herself as to the burden of proof. In essence, she conceded that the alleged inconsistencies referred to by the respondent were not inconsistencies but then proceeded to dismiss the appeal on other issues which were not raised by the respondent.
6. Permission to appeal was granted on the basis sought.

Procedure

7. Directions dated 6 April 2020 were served on the parties which stated that a provisional view had been taken that the matter could be decided without a hearing and invited written submissions regarding whether the First-tier Tribunal made an error of law and whether that decision should be set aside. The parties were further invited to submit reasons if it was considered that a hearing was necessary.
8. The appellant forwarded written submissions by email on 7 May 2020, which was followed by a response from the respondent on 13 May 2020. The appellant made no submissions regarding whether the error of law could be decided on the papers. The respondent considered that an oral hearing might be appropriate, despite conceding that the decision contained a material error of law.

Decision on error of law

9. I have taken into consideration all the documents before me in reaching my decision and have decided that the error of law issue can be fairly considered on the papers, given the parties agreement that a material error of law was made by the judge.
10. The First-tier Tribunal judge dismissed the appellant's appeal, not on the basis of the respondent's reasons for concluding that he entered into a marriage of convenience but for entirely different reasons. In doing so, the judge failed to provide any reasoning as to whether the respondent met the initial evidential burden upon her, *Agho* [2015] EWCA Civ 1198 considered. This much is accepted by the respondent.

11. Once the judge had decided there was force in the appellant's submissions regarding the reasons for refusal, she was required to address those reasons and come to a conclusion as to whether the respondent had discharged the burden upon her. While it may well be that the description of the matters relied upon by the respondent as inconsistencies was a misnomer, they were issues which required adjudication. There is merit in the appellant's submissions as to the judge's reliance on her subjective view of the relationship and the inadequacy of the reasons provided.
12. I agree with the parties that there is a material error of law in the approach that the judge has taken to the case, which has deprived both the appellant and the respondent of a fair hearing. The appropriate course is for the case to be heard afresh in the First-tier Tribunal.

Decision

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

The decision of the First-tier Tribunal is set aside.

The appeal is remitted, de novo, to the First-tier Tribunal to be reheard at Hatton Cross, with a time estimate of 3 hours by any judge except First-tier Tribunal Judge Behan.

Signed:

Date 23 July 2020

Upper Tribunal Judge Kamara