



**Upper Tribunal  
(Immigration and Asylum Chamber) Appeal Number: EA/03751/2019 (P)**

**THE IMMIGRATION ACTS**

**Field House  
Decided Under Rule 34**

**Decision & Reasons Promulgated  
On 24 August 2021**

**Before**

**UPPER TRIBUNAL JUDGE KOPIECZEK**

**Between**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**and**

**SYED TASLEEM MAHMOOD SHAH**

Respondent

**DECISION AND REASONS**

1. In this decision I refer to the parties as they were before the First-tier Tribunal (“FtT”).
2. I have decided this appeal pursuant to rule 34 of the Tribunal Procedure (Upper Tribunal) Rules 2008, noting in particular rule 34(2).
3. In Directions dated 25 September 2020, sent to the parties on 1 October 2020, Upper Tribunal Judge Coker said the following:

**DIRECTIONS**

1. FtT Judge J Bartlett allowed Mr Shah’s appeal against the refusal of his application for an EU residence card in a decision promulgated on 16 December 2019. The decision recorded that the judge gave an oral decision with reasons on the 2<sup>nd</sup> of December 2019 at the hearing before her. No summary of reasons was given in the written judgement. In an application made on 19<sup>th</sup> December 2019, the Secretary of State sought permission to appeal on the grounds that the judge erred in law by failing to give reasons for allowing the appeal in the written determination thus not enabling the respondent due opportunity to review the decision. The Secretary of State did not seek written reasons – see First-tier Tribunal (Immigration and Asylum Chamber) Rules paragraph

29(4) & (5); no reason was given why the Secretary of State failed to comply with the First-tier Tribunal Rules. In the event permission was granted by the First-Tier Tribunal judge Cruthers on the 6<sup>th</sup> of April 2020. He granted permission without having seen the file, because of the COVID-19 pandemic, and on that basis he considered it arguable that the Secretary of State had not been “given (adequate) reasons” for allowing the appeal. Directions for the further conduct of the appeal were sent on 12<sup>th</sup> June 2020 and, in the circumstances surrounding COVID 19, provision was made for the question of whether there was an error of law and if so whether the decision of the FtT Judge should be set aside to be determined on the papers. Judge Reeds also directed that the parties were to provide a transcript of the oral decision given by the First-Tier Tribunal judge. Neither party provided a transcript, neither party made submissions and neither party objected to a decision being taken on the papers. No application to extend time was made by either party and no explanation was provided for the failure to comply with directions.

2. According to the First-Tier judge’s notes of the hearing that took place on the 2<sup>nd</sup> of December 2019, both parties were represented. The presenting officer stated that she had received the “marriage transcript” the previous Friday and had served a copy on the appellant’s representative that morning. Neither party requested an adjournment. The record of the hearing draws attention to the summary of the interview provided by the respondent being inconsistent with the “transcript”. The judge made a detailed note of her oral judgement as follows:

“I have decided that the R has not discharged the burden of proof that lies on it.

1. An interview record has been submitted. Some answers are in speech marks, others are not. Some answers are recorded in detail others appear to be note form.
  2. The interview summary records several phrases, words and details which are not in the interview record.
  3. The differences between the interview summary and the interview record mean that I cannot give weight to either document as an accurate record of what was said during the interview.
  4. The inevitable result is that there is a very weak evidential basis for the position set out in the RL. Such a weak basis that the R has failed to discharge the evidential burden on it.”
3. Had the respondent applied for written reasons, the above is what would have been provided. In the light of those reasons I am of the provisional view that this appeal by the Secretary of State should be dismissed. However I am mindful of the fact that she states that she has not seen the reasons and in those circumstances I direct:
    - (a) The respondent to consider and notify the Tribunal and the appellant by email and hardcopy no later than 14 days after

the sending of this decision, whether she intends to pursue her appeal;

- (b) In the absence of any such notification the Tribunal will proceed to dismiss the appeal without further notice to either party, such that the decision of the First-tier tribunal stands.
- (c) In the event that the Secretary of State states that she intends to pursue her appeal, both parties have a further 10 days from the date of the Secretary of State's notification, to file and serve submissions. Thereafter the file will be placed before an Upper Tribunal judge for a decision to be taken on the papers.
- (d) All documents to be filed and served by email and hardcopy.

4. In Further Directions dated and sent on 3 June 2021 I said the following:

FURTHER DIRECTIONS

- 1. In directions dated 25 September 2020, sent to the parties on 1 October 2020 by email, Upper Tribunal Judge Coker required the parties, in particular the respondent, to take certain steps within a specified time. A copy of those directions is sent with these further directions.
  - 2. As far as I am aware, there has been no response to those directions by either party.
  - 3. Accordingly, unless no later than 14 days from the date that these directions are sent the respondent satisfactorily explains in writing why Judge Coker's directions have not been complied with, and provides a reasoned response to those directions, the Tribunal is likely to proceed as provisionally indicated by Judge Coker without further reference to the parties.
5. As far as I am aware, neither party has responded in any way to either Judge Coker's or my directions.
6. Accordingly, I proceed to determine this appeal in the way proposed by Judge Coker at paragraph 3, in particular paragraph 3(b). Thus, the respondent's appeal is dismissed. I am not satisfied that the FtT erred in law and its decision to allow the appeal therefore stands.

***Decision***

7. The decision of the First-tier Tribunal did not involve the making of an error on a point of Law. Accordingly, the decision of the First-tier Tribunal to allow the appeal stands.

Signed

**A.M. Kopieczek**  
Upper Tribunal Judge Kopieczek

20/08/2021