

marriage on 31 October 2019. That application followed various previous unsuccessful applications made under the EEA Regulations and on Article 8 human rights grounds, as well as a previous marriage to a different Romanian national and the dismissal of an appeal on 24 October 2019 against the refusal to issue a residence card as the extended family member of the current sponsor Ms Pisteia on grounds of their relationship being one of convenience.

3. The appellant's application was refused on 3 June 2021 on the grounds that he had failed to provide adequate evidence to show that he qualified for a right to reside as the family member of his sponsor. The respondent noted that the appellant had failed to attend three marriage interviews as his sponsor was out of the country and considered that he had failed adequately to evidence that his marriage was genuine. The respondent inferred from this that there were reasonable grounds to suspect that the marriage was one of convenience for the sole purpose of obtaining an immigration advantage.

4. The appellant appealed against that decision and his appeal came before First-tier Tribunal Judge Holt on 25 November 2021. The appellant gave evidence at the hearing, as did his sponsor and his brother. The judge noted that the appellant's explanation for his sponsor not having been able to attend the marriage interviews was that her grandfather had been ill with Covid and that she had had to go back to Romania to look after him as her parents were in Spain and were unable to look after him themselves. The judge was not satisfied that the sponsor and the appellant were in a genuine relationship for various reasons including, *inter alia*, the fact that there was no evidence to corroborate the sponsor's claims to have had to go to Romania to look after her grandfather and that there were no photographs of the appellant and sponsor together. At [18] of her decision Judge Holt found that the "*most glaring defect in the appellant's claims and evidence*" was the fact that he and the sponsor had failed to attend a marriage interview with the respondent. The judge concluded that she was not remotely satisfied that the parties were in a genuine subsisting relationship and agreed with the respondent that the requirements of the EEA Regulations 2016 were not met. She accordingly dismissed the appeal.

5. The appellant sought permission to appeal Judge Holt's decision to the Upper Tribunal on three grounds, namely: mistake of fact and failure to take account of material matters in relation to the reasons given for the sponsor's inability to attend the marriage interview; failure to take account of material matters in relation to the absence of photographic evidence of the relationship; and a flawed approach to judicial notice.

6. Permission to appeal was granted in the First-tier Tribunal and the matter then came before me.

7. Mr Holmes made submissions relying upon all three grounds, but with particular focus on the first two grounds. With regard to the first ground he referred to the chronology of events involving the three invitations to a marriage interview and the evidence which was before the judge which explained the sponsor's inability to attend. That evidence consisted of

communications between the appellant's solicitors and the Secretary of State in which it was explained that the sponsor's grandparents were ill and that she required the return of her passport in order to travel to Romania; that in the absence of the return of her passport the sponsor had had to return to Romania on a one-way emergency travel document and that she required her passport to return to the UK; that further to the return of the passport to the appellant's solicitors there was insufficient time for the passport to be sent to the sponsor in Romania, for her to arrange her flight back to the UK and then complete the required quarantine period; and that a short postponement of the interview was therefore required. Mr Holmes also referred to the copy of the sponsor's emergency travel document which had been before the First-tier Tribunal. He referred to the judge's finding at [17(ii)] of her decision that the appellant had failed to provide evidence of why the sponsor was out of the UK for the relevant period of time and her observation that the evidence pointed to the sponsor being in Romania because she was living there. In response, he pointed out that the issue of the sponsor's travel to Romania had arisen before the marriage interview was contemplated and after eight months of inactivity by the respondent, that the judge had evidence of the travel arrangements and the chronology of events including evidence that the sponsor was employed in the UK, and that the judge also had evidence showing that the sponsor was unable to return to the UK because she was waiting for the Secretary of State to send her passport to her. Mr Holmes submitted that in referring at [18] of her decision to the "*glaring defect in the appellant's claims and evidence*" and the failure to attend the marriage interview, the judge had erred by characterising the explanation he gave to the Tribunal as his instructions rather than facts and evidence and by failing to make no findings on that explanation.

8. With regard to the second ground, Mr Holmes submitted that whilst the judge drew adverse conclusions at [17(v)] from the absence of photographic evidence of the relationship, such evidence had been submitted by the appellant to the respondent with his application.

9. Mr Diwnycz, in response, accepted from the evidence and from Mr Holmes' submissions, that the grounds of appeal could not be resisted and he therefore conceded that the judge had erred in law as stated by Mr Holmes.

10. In the circumstances, given Mr Diwnycz's concession and in light of Mr Holmes' lengthy and persuasive submissions as summarised above and the evidence to which he referred, there is no need for me to set out any detailed reasoning in concluding that Judge Holt's decision is simply unsustainable and must be set aside. It is plain that, in placing substantial weight upon the sponsor's failure to attend the marriage interview and her absence from the UK, the judge failed to give any, or any proper consideration to the explanation provided within the evidence and failed to make any proper findings in that regard. The grounds, together with Mr Holmes' very clear submissions, demonstrate a failure by the judge to take account of material matters. The appropriate course, as the parties agreed, is for the matter to be remitted to the First-tier Tribunal to be heard *de novo* by a different judge.

DECISION

11. The making of the decision of the First-tier Tribunal involved the making of an error on a point of law. The decision is set aside. The appeal is remitted to the First-tier Tribunal to be dealt with afresh, pursuant to section 12(2)(b)(i) of the Tribunals, Courts and Enforcement Act 2007 and Practice Statement 7.2(a), before any judge aside from Judge Holt.

Signed: S Kebede
Upper Tribunal Judge Kebede

Dated: 19 July 2022