



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-000092
EA/03416/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 01 September 2023

Before

UPPER TRIBUNAL JUDGE RINTOUL

Between

MUHAMMAD ARSHAD
(NO ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: no appearance

For the Respondent: Mr Basra, Senior Home Office Presenting Officer

Heard at Melville Street, Edinburgh on 22 August 2023

DECISION AND REASONS

1. The appellant appeals with permission against the decision of First-tier Tribunal Judge G Richardson promulgated 19 October 2022.
2. The appellant's case is that he is lawfully married to Ms A Tasleem ("the sponsor"), a Spanish national. On 20 June 2021 he applied for a family permit under Appendix EU (Family Permit) to join her here. That application that was refused on 8 March 2022 on the basis that the marriage certificate which the appellant had provided in support of his application had was false, as shown in a Document Verification Report.

3. The appellant requested that the appeal be considered on the papers only.
4. Having read the detailed grounds of appeal, the judge directed himself [4] that the burden was on the appellant and concluded that marriage certificate which had been supplied was false.
5. The appellant sought permission to appeal on several grounds, and on 14 February 2023 UTJ Sheridan granted permission, stating:
 1. The appellant seeks permission to appeal against a decision of Judge of the First-tier Tribunal Richardson.
 2. I am not persuaded by any of the submissions in the grounds as drafted. It is argued that the judge failed to consider the newly issued marriage certificate, but this is plainly not the case because it was considered in paragraph 5. The grounds submit that the judge erred by not considering post-decision evidence but it is plain from paragraphs 5 -7 that this was considered.
 3. I have decided, however, after considering the points made in the headnote to AZ (error of law: jurisdiction; PTA practice) Iran [2018] UKUT 245, to grant permission on a ground that was not advanced by the appellant. The ground is as follows:

The respondent refused the appellant's application for an EUSS Family Permit on the basis that he had submitted a falsified document. The judge stated in paragraph 4 that the burden of proof lay with the appellant and then found that the appellant used a false document. The judge arguably erred by failing to appreciate that the respondent arguably had the burden of proving that the appellant used a false document.
 4. I do not restrict the grounds that can be pursued although the appellant may wish to reconsider which (if any) of the arguments in the grounds he intends to pursue in the light of my observations in paragraph 2 above.
6. When the appeal was called on at 10.00am there was no appearance by or on behalf of the appellant or sponsor. I deferred consideration of the matter until 12noon by which time there was still no appearance on or behalf of the appellant, nor any explanation for that. I was satisfied that due notice of the time, date and venue of the appeal had been given and that in all the circumstances of the case, it was appropriate and in the interest of justice to proceed to determine the appeal.
7. Mr Basra accepted, very fairly, that the judge had misdirected himself as to the burden of proof and that therefore the decision of the FtT involved the making of an error of law. I concur.
8. Accordingly, I am satisfied that the decision of the First-tier Tribunal involved the making of an error of law and I set it aside. Given the fundamental nature of the error, which will require a remaking of all of the

relevant facts, I consider that in all the circumstances of this case, that it is appropriate and in the interest of justice to remit the appeal to the First-tier Tribunal for it to make a fresh determination on all issues. It would seem sensible for that to take place at an oral hearing.

Notice of Decision

The decision of the First-tier Tribunal involved the making of an error of law and I set it aside

I remit the appeal to the First-tier Tribunal for it to make a fresh decision on all issues.

Signed

Date: 22 August 2023

Jeremy K H Rintoul

Judge of the Upper Tribunal
Immigration and Asylum Chamber