Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: IA/24390/2014**

THE IMMIGRATION ACTS

Heard at Field House	**Determination Promulgated**
On 25 February 2015	**On 27 February 2015**

Before

Deputy Upper Tribunal Judge MANUELL

Between

MR ANSAR MEHMOOD

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr P Richardson, Counsel (instructed by Bhogal Partners Solicitors)
For the Respondent: Ms A Brocklesby-Weller, H O Presenting Officer

DETERMINATION AND REASONS

1. The Appellant appealed with permission granted on 16 January 2015 by First-tier Tribunal Judge N Osborne against the dismissal of his appeal seeking the issue of a residence card under regulation 7 of the Immigration (European Economic Area) Regulations 2006 (as amended) ("the EEA Regulations") by First-tier Tribunal Judge Henderson in a decision and reasons promulgated on 19 November 2014.

2. The Appellant is a national of Pakistan, born on 16 June 1989. He had denied that his marriage to a Polish national, i.e. an EEA citizen, was one of convenience.

3. Judge Henderson found that (a) the Appellant's spouse had not shown that she was a qualified person within regulation 6 of the Immigration (European Economic Area) Regulations 2006 and (b) the Appellant's marriage was one of convenience, i.e., was a sham.

4. Permission to appeal was granted by Judge Osborne because he considered it arguable that the judge had conducted the hearing unfairly by refusing an adjournment application made by the Respondent (for the purpose of producing the record of the Appellant and spouse interview). It was also considered arguable that the judge had erred by failing to consider the Article 8 ECHR claim which the Appellant had raised in his Notice of Appeal.

5. By notice under rule 24 of the Upper Tribunal Procedure Rules, in the form of a letter dated 22 January 2015, the Respondent (the Secretary of State) indicated that she opposed the application for permission to appeal.

6. Mr Richardson for the Appellant submitted that the judge had erred in her credibility findings, on which her decision under regulations 6 and 7 turned. The absence of the Home Office interview records made the hearing unfair. That was seen in the judge's view of the Appellant and his spouse's evidence, that they had collaborated: see [23] and [29] of the decision and reasons. Although no objection had been taken at the time by the Appellant's counsel, the responsibility to ensure that a hearing was fair rested ultimately on the trial judge. There was persuasive evidence of cohabitation in the forms of evidence of the shared address. Too much had been made by the judge of minor matters and her examination of the evidence was insufficiently thorough. The judge seemed to have misunderstood that evidence of meeting regulation 6 was only needed as at the date of the hearing. The judge seemed to think that more was needed, which was an error of law. The judge's unfair decision should be reversed.

6. Ms Brocklesby-Weller for the Respondent (the Secretary of State) relied on the rule 24 notice. There had been no unfairness. The Appellant had been represented by counsel who had proceeded without demur to call the Appellant and his spouse. Their witness statements had referred to the interview records. Although the interview records in full form had not been available, the reasons for refusal letter set out the Respondent's case so that the Appellant was aware of the allegations he faced. There was in fact no dispute about what had been said at the interviews as the answers given were accepted. The judge had conducted a full and careful assessment of

the evidence, and had directed herself correctly as to the ability of the Appellant to provide evidence to the date of the hearing. The Appellant had not done so. The determination contained no error of law.

7. Mr Richardson wished to add nothing further.

8. At the conclusion of submissions the tribunal stated it found that there was no material error of law by First-tier Tribunal Judge Henderson in her decision and reasons. The tribunal reserved its decision which now follows.

9. The tribunal agreed with Ms Brocklesby-Weller's submissions. Indeed, in the tribunal's view the grant of permission to appeal is not all easy to follow and must be regarded as generous. There was no application on behalf of the Appellant for the hearing to be further adjourned to enable the Respondent to produce the interview records. Such an adjournment would have been obviously prejudicial to the Appellant, as he was ready to proceed and had instructed competent counsel and incurred costs. Witness statements and the Appellant's bundle of documents were available. The Respondent's case was sufficiently set out in the reasons for refusal letter. There was no dispute about the accuracy of the interview answers so far as they were placed in evidence. The Appellant's counsel chose to examine the Appellant and his spouse about their answers at their interviews. It is far too late for any objection on procedural fairness grounds to be raised. The tribunal is satisfied in any event that the hearing was fairly conducted.

10. The judge heard and saw the witnesses for herself, a highly relevant advantage given that one of the main issues was the substance of their relationship. The judge identified a number of adverse matters which she considered were significant. That included the last minute production of evidence which could and should have been produced sooner. There were numerous discrepancies in the documents revealed by the judge's meticulous analysis, including a lack of correspondence between the spouse's claimed earnings and the bank statements the spouse provided. The various problems identified by the judge were not minor matters at all. Her adverse findings were open to her.

11. Nor did the judge misdirect herself as to the relevant date for her findings of fact, which was correctly set out at [6] of the decision, i.e., the date of the hearing. The judge's reference at [29] to "has been exercising Treaty rights" is in the context of a general summary of the evidence, explaining why the judge was unable to give weight to the spouse's claimed current employment.

12. Article 8 ECHR simply did not arise for the judge's consideration. In the first place, there was no section 120 notice and there were no Removal Directions. The Appellant had the option of making a fresh application under the Immigration (European Economic Area) Regulations 2006 as the reasons for refusal letter stated. The judge found in any event that there was in fact no family relationship.

13. For the reasons given above, no material error of law has been shown. The Appellant's onwards appeal fails and the decision and reasons stands.

DECISION

There was no material error of law in the First-tier Tribunal's decision and reasons, which stands unchanged

Signed **Dated 26 February 2015**

Deputy Upper Tribunal Judge Manuell