



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

Appeal Number: IA/29406/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 28th January 2015**

**Decision Promulgated
On 2nd February 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE HARRIES

Between

**MR MOHAMMAD AFZAL SHAH
(NO ANONYMITY DIRECTION)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mrs S Bassiri-Dezfouli, Counsel

For the Respondent: Mr S Kandola, Home Office Presenting Officer

DECISION AND REASONS

Details of the Appellant and Proceedings

1. The appellant was born on 10th January 1968 and is a citizen of Pakistan. He was granted permission to appeal to the Upper Tribunal against the decision of First-tier Tribunal Judge Stott (the Judge) who, in a determination promulgated on 16th October 2014, dismissed his appeal

under the EEA Regulations 2006 for a residence card on the basis of being the spouse of a qualified person. The central issue was whether the marriage was one of convenience.

2. The grounds on which permission to appeal were granted included the assertion that the Judge did not have before him the record of the marriage interview in a case where the respondent conceded that the majority of questions were answered correctly. The case depended heavily on credibility findings and it was found to be arguable that the Judge erred in making his decision without having before him a full record of interview. The matter accordingly came before me to determine whether the decision of the First-tier Tribunal contained an error of law.
3. Rule 39 of the Tribunal Procedure (Upper Tribunal) Rules 2008 states that the Upper Tribunal may, at the request of the parties but only if it considers it appropriate, make a consent order disposing of the proceedings and making such other appropriate provision as the parties have agreed. Mr Kandola for the respondent indicated to me at the outset of the hearing, having already discussed the matter with Mrs S Bassiri-Dezfouli for the appellant, that he accepted that there was nothing to show that the Judge had a full record of interview before him in making his decision.
4. Mr Kandola accepted that this amounted to a material error of law, by way of procedural unfairness or otherwise; the decision had been made in the absence important evidence going to the core of the issues involved. He accordingly did not oppose the grounds of appeal and agreed that the decision should be set aside and remade. Mr Kandola submitted a full record of interview and accepted that the appellant would need time to consider the evidence which had not been previously made available.
5. Both Mr Kandola and Mrs Bassiri-Dezfouli agreed that in the light of the new evidence served which was absent before the First-tier Tribunal, in the light of the necessary fact finding involved in the re-making of the decision and having regard to the overriding objective that the matter would be most appropriately remitted to the First-tier Tribunal for the decision to be remade.
6. This course of action was in my view appropriate in the light of the Practice Statement on the disposal of appeals in the Upper Tribunal made by the Senior President of Tribunals on 25th September 2012 as follows:
 - 7.2 The Upper Tribunal is likely on each such occasion to proceed to re-make the decision, instead of remitting the case to the First-tier Tribunal, unless the Upper Tribunal is satisfied that:
 - (a) the effect of the error has been to deprive a party before the First-tier Tribunal of a fair hearing or other opportunity for that party's case to be put to and considered by the First-tier Tribunal; or

(b) the nature or extent of any judicial fact finding which is necessary in order for the decision in the appeal to be re-made is such that, having regard to the overriding objective in rule 2, it is appropriate to remit the case to the First-tier Tribunal.

7. By consent, the decision of the First-tier Tribunal is set aside. The case is remitted to the First-tier Tribunal sitting at Birmingham on 5th May 2015 for reconsideration on the basis that none of the findings shall stand.

Summary of Decisions

8. It is conceded that the decision of the First-tier Tribunal contained a material error of law. That decision is set aside.
9. With the consent of both parties, in accordance with Rule 39 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the case is remitted to the First-tier Tribunal sitting at Birmingham on 5th May 2015 for reconsideration on the basis that none of the findings shall stand.

Directions

10. The case shall not be heard by First-tier Tribunal Judge Stott.
11. Any other directions will be for the First-tier Tribunal to consider, but it may assist to know that 3 witnesses are to be called and the services of a Russian interpreter will be required.

Anonymity

The First-tier Tribunal made no order for anonymity. There is no application to make such an order and there is nothing to suggest that such a direction is needed.

Signed

J Harries
Deputy Upper Tribunal Judge
Date: 30th January 2015