



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

Appeal Number: IA239342015

THE IMMIGRATION ACTS

**Heard at Field House
On 23 May 2017**

**Decision & Reasons Promulgated
On 28 July 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE BAGRAL

Between

**NABIL ZEHRI
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr J Collins, of Counsel, instructed by BMAP

For the Respondent: Mr N Bramble, Senior Home Office Presenting Officer

DECISION ON ERROR OF LAW

Anonymity

1. The First-tier Tribunal did not make an anonymity order. I have not been invited to make one and see no reason to do so.

Introduction and Background

2. The Appellant appeals against a decision of Judge of the First-tier Tribunal Khawar promulgated on 15 September 2016.
3. The Appellant is a citizen of Algeria born 4 November 1985 who applied on 21 August 2014 for a Residence Card as a family member of an EEA national.
4. The application was made on the basis that the Appellant was married to, Pantanassa Sofia Karakasi, a Greek national. It was contended that the Appellant's spouse, to whom I shall refer as "the Sponsor", was exercising Treaty rights in the UK.
5. The application was refused on 12 June 2015 essentially because it was supported by the inclusion of a false document and the marriage was considered to be one of convenience.
6. The Appellant appealed to the First-tier Tribunal (IAC).
7. By the time the appeal came before the Judge the relationship between the Appellant and Sponsor had broken down and the couple had separated. Before the Judge the Respondent was not represented but the Appellant was represented by Mr Collins. The Judge refused an application to adjourn by Mr Collins to obtain police reports to substantiate a claim of domestic violence because it was irrelevant to the issues and there had been ample opportunity to obtain such evidence. The Judge heard oral evidence from the Appellant. A summary of his claim is set out at [9]-[15]. Central to the Appellant's case was his contention that his marriage was genuine established by the fact that they were permitted to marry following an interview by Immigration Officers at the Registry Office on the date of marriage, as well as medical records that supported his claim that he was a victim of domestic violence with consequent mental health problems.
8. The Judge found the Appellant's appeal could not succeed as the marriage had ended [18]. The Judge also declined to make any findings in relation to the marriage and the alleged use of false documents and indeed the Sponsor's employment. The Judge concluded that he could not do so in the absence of cross-examination from a Home Office Presenting Officer and, in consequence, it was inappropriate *"for the Tribunal Judge to enter into the arena in order to cross examine an Appellant at some length, especially one who potentially has mental health issues"*. In his omnibus conclusion, the Judge stated thus at [21]:

"For the above reasons I do not make findings of fact, in relation to whether or not the Appellant's marriage is/was one of convenience

especially in view of the fact that Immigration Officers interviewed both the Appellant and Sponsor immediately before their Civil Registration of marriage and allowed the Civil Registration Ceremony to continue, having concluded that there were only “minor discrepancies” between the account of the Appellant and Sponsor and he had established a life in United Kingdom. I am bound to note that the Immigration Officers conduct in permitting the Civil Registration Ceremony to continue tends to suggest that the Appellant’s marriage to the Sponsor was genuine. This appears to be further supported by the Appellant’s medical records. However, as noted above, due to the lack of any adequate cross-examination of the appellant, I am not in a position to make any finding in his favour or indeed against the Appellant.”

9. The Appellant applied for permission to appeal and whilst permission was initially refused by the First-tier Tribunal, it was granted by the Upper Tribunal on 15 March 2017.
10. Directions were issued that there should be a hearing before the Upper Tribunal to ascertain whether the First-tier Tribunal had erred in law such that the decision should be set aside.

Decision on Error of Law

11. The essence of the grounds drafted by Mr Collins is that the Judge failed in his duty to make findings on material issues and that he was not absolved from doing so in the absence of a Respondent’s representative. In view of those grounds, the Respondent does not oppose the appeal. She concedes through Mr Bramble that the Judge materially erred in law in failing to make any findings in relation to the core issues in dispute between the parties, leading to the conclusion that the decision, as a whole, was poor.
12. I find it has been made out for the reasons set out in the grounds seeking permission to appeal to the Upper Tribunal and the positional statements by both advocates before this tribunal that the approach taken by the Judge is infected by arguable legal error such that the decision dismissing the appeal is unsafe and cannot stand. I am satisfied that there was a denial of natural justice to the parties by the Judge’s failure to make any evaluations of material aspects of the evidence, particularly, in view of the fact that the Appellant faced two serious allegations; one of misuse of rights and the other of fraud.
13. Whilst it was not for the Judge to conduct the Respondent’s case in her absence, it is trite that in a case where there is a concern that matters cannot be properly addressed, then the Judge should adjourn the case

part heard and require the Home Office to make available a Presenting Officer at the adjourned hearing (see: **MNM (Surendran guidelines for Adjudicators) Kenya * [2000] UKIAT 00005**). Such would have been the appropriate course in view of the serious allegations faced by the Appellant notwithstanding the inevitable outcome on the facts presented at the date of hearing.

Decision

The decision of the First-tier Tribunal is set aside. It was agreed that the appropriate way forward, in light of the extent of the errors, is for the matter to be remitted to the First-tier Tribunal to be reheard by a judge other than Judge Khawar.

Directions

The Respondent is directed to file and serve a copy of the interview record(s) in respect of the Appellant and Sponsor that took place during an enforcement visit at the Registry Office on 4 September 2014, and/or any Immigration Officers' notes relating to it, 14 days prior to the date of next hearing to be fixed by the First-tier Tribunal in due course.

Signed

Date 20 July 2017

Deputy Upper Tribunal Judge Bagral