**Upper Tribunal**
**(Immigration and Asylum Chamber)** Appeal Number: IA/24170/2015

**THE IMMIGRATION ACTS**

| **Heard at Field House** | **Decision & Reasons Promulgated** |
|---|---|
| **On 10th April 2018** | **On 20th April 2018** |

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE J G MACDONALD**

**Between**

**MR RAHMAN IQBAL**
**(ANONYMITY ORDER NOT MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**
For the Appellant: Ms A Jones, Counsel instructed by Farani Taylor Solicitors
For the Respondent: Ms Z Ahmad, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The Appellant is a national of Pakistan whose appeal was dismissed by First-tier Tribunal Judge Chowdhury in a decision promulgated on 12th April 2017. The judge did not find that the Appellant had demonstrated he had a genuine marriage relationship with his EEA Sponsor and gave reasons for that going on to dismiss the appeal.

2. Grounds of application were lodged. It was said that the judge had failed to properly set out the burden and standard of proof. Furthermore, the Appellant and his wife had been willing to give live evidence but the Home

Office Presenting Officer said that he did not wish to cross-examine the Appellant. When the judge said that she had heard submissions from both advocates and the matter had proceeded by way of submissions only that gave an unfair impression on the real position. Further grounds were mentioned.

3. Permission to appeal was initially refused but granted by Deputy Upper Tribunal Judge Zucker in a decision dated 20th February 2018 when he said it was not clear upon what basis it was agreed that the appeal would proceed by way of submissions only.

4. Thus the appeal came before me on the above date.

5. Ms Jones appeared for the Appellant and said that while the way the judge had set out the burden and standard of proof was convoluted she was not making a point on that score. However the position was slightly but importantly different to that set out by the judge in terms of hearing the appeal on submissions only. She had a note from the previous Counsel (Mr Collins) who said that the Appellant and Sponsor had adopted their witness statements and there was no cross-examination after that point.

6. Ms Jones submitted that the case therefore needed a proper hearing. The facts were in dispute. The case should be remitted to the First-tier Tribunal.

7. The position of the Home Office was very much in line with Ms Jones in that given the fact that there was a note from Counsel saying that the Appellant and the Sponsor *had* given evidence then it was difficult to see that there had been a proper hearing. There was a fundamental dispute of the facts. On the basis of the note provided by Counsel the decision should be set aside and the case should be remitted to the First-tier Tribunal.

## **Conclusions**

8. It seems clear that there is a flaw in the approach taken by the judge when she says that she was viewing the case on submissions only. In fact what now transpires is that the Appellant and Sponsor gave evidence adopting their statements and were not challenged in any aspect of that because the Home Office Presenting Officer said he did not need to ask them any questions. However it is then arguably very unfair for the Appellant and Sponsor to be told that despite the fact that no one was asking them any questions points were then taken against them by the Home Office Presenting Officer and ultimately accepted by the judge. What should have happened in this case is that the evidence of the Appellant and Sponsor should have been thoroughly tested in cross-examination so that when the judge heard submissions the judge could decide on what facts she accepted and what facts she did not accept and whether there were other findings she wished to make. If the evidence of the Appellant and Sponsor was really not to be challenged in any way it is difficult to see a

proper basis for their evidence not being accepted. Fundamentally, as parties agreed, there has not been a proper hearing in this case and the judgment is not safe and therefore has to be set aside.

9. The decision of the First-tier Tribunal is therefore set aside in its entirety. No findings of the First-tier Tribunal are to stand. Under Section 12(2)(b)(i) of the 2007 Act and of Practice Statement 7.2 the nature and extent of the judicial fact finding necessary for the decision to be remade is such that it is appropriate to remit the case to the First-tier Tribunal.

**Notice of Decision**

10. The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.

11. I set aside the decision.

12. I remit the appeal to the First-tier Tribunal.

13. No anonymity order is made.

Signed *JG Macdonald* Date 19th April 2018

Deputy Upper Tribunal Judge J G Macdonal