



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

Appeal Number: EA/09238/2016

THE IMMIGRATION ACTS

**Heard at Field House
On 27 November 2017**

**Determination Promulgated
On 13 December 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE MCGEACHY

Between

**PRIYAKANT MAHENDRASINH PARMAR
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

ENTRY CLEARANCE OFFICER - NEW DELHI

Respondent

Representation:

For the Appellant: None

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

DETERMINATION AND REASONS

1. The appellant, a citizen of India, appeals against a decision of Judge of the First-tier Tribunal A J Parker, who in a determination promulgated on 17 February 2017 dismissed his appeal against a decision of the Entry Clearance Officer, New Delhi to grant him a family permit as the spouse of an EEA national. The appellant having appealed and permission to appeal having been granted by Judge of the First-tier Tribunal Gillespie, the Secretary of State in a Rule 24 notice dated 17 October 2017 stated that the respondent did not oppose the appellant's application for permission to appeal and invited the Tribunal to remit the matter to the First-tier

Tribunal for a consideration of whether or not the appellant is entitled to a family permit under the EEA Regulations.

2. When granting permission to appeal Judge Gillespie stated:-

- “2. ... It appears to me fairly arguable that the learned judge has erred in law in failing to apply his mind to and to determine whether or not the appellant and the EEA national sponsor are lawfully married; and in failing to apply his mind to and to determine whether or not the EEA sponsor intends to travel to the United Kingdom and will here be an EEA national residing in accordance with Regulations. These are the fundamental requirements for the issue of a family permit and are not addressed, disclosing arguable error of law.
3. The decision appears to be based upon a perception that the appellant has in the past misled the respondent. The decision appears to be influenced by a perception, although not raised by the respondent of potential fraud by the appellant. To allow such unresolved suspicion to influence the result, without clearly addressing and making findings on the issue, is to err by relying upon improper considerations.
4. It might be, although there is no finding to that effect, that the learned judge considered there to be a marriage of convenience. If that be the case, then it is arguable that the learned judge failed to apply the proper principle to the question of determination of an allegation of marriage of convenience and failed to make a proper reasoned finding on the issue.”

3. I consider that Judge Gillespie clearly identifies the errors of law in the determination and, having noted the fact that the respondent does not oppose the application and invited the Tribunal to remit the matter to the First-tier Tribunal, I now set aside the decision, having found the errors of law to which Judge Gillespie referred, and direct that the appeal be remitted to the First-tier Tribunal for a hearing afresh. It may well be of use if the appellant’s wife were able to attend the remitted hearing.

Decision

The decision of the First-tier Judge is set aside. The appeal is remitted to the First-tier Tribunal for a hearing afresh on all grounds.

No anonymity direction is made.



Signed

Date: 11 December 2017

Deputy Upper Tribunal Judge McGeachy