



**Upper Tribunal
(Immigration and Asylum Chamber)
EA/03150/2016**

Appeal Number:

THE IMMIGRATION ACTS

**Heard at Field House
On 13th November 2018**

**Decision & Reasons Promulgated
On 27th November 2018**

Before

UPPER TRIBUNAL JUDGE MARTIN

Between

**MR SANJAYA BHAKTA KANDEL
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Dr C U U Ikegwuruya (Almond Legals)

For the Respondent: Mr T Wilding (Senior Home Office Presenting Officer)

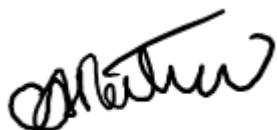
DECISION AND REASONS

1. This is an appeal to the Upper Tribunal by the Appellant in respect of a decision by First-tier Tribunal Judge Ross promulgated on 16th March 2018 after a hearing on 26th January 2018 at Taylor House.
2. The Appellant is a citizen of Nepal and had made an application for a residence card as the spouse of an EEA national. The application was refused by the Secretary of State on the basis that the Appellant and his wife had not attended on four occasions for interview. The Secretary of State decided that this was not a genuine marriage but a marriage of convenience. That was the issue to be decided by the Judge in the First-tier Tribunal.

3. The Judge heard evidence from both the Appellant and his wife but nowhere in his Decision and Reasons is there any mention of or analysis of that evidence. The Judge has not considered for himself whether or not this was a genuine marriage and has simply followed the Secretary of State's rationale. The Appellant and his spouse had not attended for interview and therefore he dismissed the appeal. That is clearly a material error of law. The Judge was tasked with deciding whether this was a marriage of convenience and he failed to do that.
4. With the agreement of the representative for the Secretary of State, the decision is set aside in its entirety and remitted to the First-tier Tribunal for a full rehearing on all matters.
5. There is no application for or necessity for an anonymity order in this case.

Decision

The appeal is allowed to the extent that it is remitted to the First-tier Tribunal for a full rehearing at Taylor House.



Signed
2018

Date 21st November

Upper Tribunal Judge Martin