Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: EA/07748/2017**

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 27 September 2018	**On 13 November 2018**

Before

UPPER TRIBUNAL JUDGE PERKINS

Between

WAQAS SHOUKAT IMRAN RAJA
(anonymity direction not made)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: The appellant did not appear and was not represented.
For the Respondent: Mr Bramble, Home Office Presenting Officer

DECISION AND REASONS

1. Notice of hearing was sent on 16 August 2018. When it was convenient to deal with the case at about 11.15 am the appellant was neither present nor had he offered any explanation for his absence. In the absence of any such explanation I considered it just to continue with the hearing.

2. This is an appeal by a litigant in person against the decision of the First-tier Tribunal dismissing his appeal against the decision of the Secretary of State refusing him a residence card as the husband of an EEA national.

3. Essentially there were two points taken. The first is that the Secretary of State found that the marriage was one of convenience. The First-tier Tribunal Judge misdirected himself when considering that part of the case and does not seem to have been familiar with the decision of the Supreme Court in **Sadovska and Another v SSHD [2017] UKSC 54** which I respectfully draw to his attention but the apparent error is immaterial because the point was resolved in the appellant's favour.

4. The second point concerned the failure to show that the appellant's wife had been exercising treaty rights at the material time. There was quite simply no evidence before the Tribunal on which the judge could possibly have come to the conclusion that the wife had been exercising treaty rights. If it is available then it should have been served before the hearing. Standard directions were sent to the appellant on 3 October 2017 telling him how evidence had to be served and made available for the Tribunal. For some reason he did not do that but that is his loss and the judge cannot be criticised for deciding the case on the evidence that was there when the appellant had been told to produce the evidence on which he chose to rely and he did not do as he was told.

5. The points taken in the grounds are that the judge acted unfairly by going ahead in the absence of the appellant. The appellant complains that he was not well enough to get to the hearing. It is rather odd that that case was listed for a First-tier Tribunal hearing in Newport when the appellant was living in Slough. Nevertheless this is what was done and the First-tier Tribunal Judge rightly directed his mind carefully to the application for an adjournment and noted no medical evidence that the appellant was unfit to attend. It may very well be that the appellant was suffering from a bad back. Bad backs are not necessarily reasons not to attend. If a person is so disabled that it is not possible to travel by public transport or any other means to the hearing centre then he should produce medical evidence to confirm that. In the absence of it a judge is likely to take the view that the person could attend and the judge here is not to be criticised for making the decision that he did.

6. It follows therefore that I see no merit in these grounds. The basic criticism is misconceived and there was no evidence before the Tribunal upon which the Tribunal could have allowed the appeal properly.

Notice of Decision

7. It follows that I dismiss this appeal because I see no material error in the decision.

Signed
Jonathan Perkins
Judge of the Upper Tribunal

Dated 6 November 2018