



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: EA/02689/2019

THE IMMIGRATION ACTS

Decided under rule 34  
On 23<sup>rd</sup> June 2021

Decision & Reasons Promulgated  
On 1<sup>st</sup> July 2021

Before

UPPER TRIBUNAL JUDGE KEITH

Between

MR RAHMAN IQBAL

(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DECISION AND REASONS

1. These are the decision and reasons given without a hearing, pursuant to rule 34 of the Tribunal Procedure (Upper Tribunal) Rules 2008. The context of doing so is set out in the background below.

Background

2. The appellant appeals against the decision of First-tier Tribunal Judge Hanbury, promulgated on 12<sup>th</sup> November 2019, by which the FtT dismissed the appellant's appeal against the respondent's decision of 24<sup>th</sup> May 2019 to refuse to issue the appellant with a residence card under the Immigration (EEA) Regulations 2016, as the former family member of an EEA national exercising treaty rights in the UK, who claims to have a retained right of residence. The FtT found that marriage between

the appellant and his estranged wife was a marriage of convenience, entered into solely for the purpose of facilitating the appellant's enhanced immigration status in the UK under the Regulations (see §22 of the FtT's decision). The FtT reached that conclusion, noting evidence about visits to the couple's claimed address, where it was said that the appellant was absent (§§11 and 18); the lack of other evidence about the claimed relationship such as mobile phone photographs or texts to one another (§19); discrepancies in the couple's account (§20); lack of contact between the couple's respective families; lack of visits; and lack of evidence of cohabitation (§21).

### **The grounds of appeal and grant of permission**

3. The appellant lodged grounds of appeal which include that the FtT had failed to consider that the appellant had met the sponsor's parents; there was evidence of cohabitation; and the FtT had failed to make findings in relation to the witness statement of a friend, said to be in support of the genuineness of the marriage.
4. First-tier Tribunal Judge Foudy refused permission to appeal on 1<sup>st</sup> May 2020, but on renewed permission, Upper Tribunal Judge Mandalia granted permission on all grounds in a decision dated 29<sup>th</sup> May 2020, regarding it as arguable that the FtT had erred in failing to consider the witness statement of the friend, and the evidence of cohabitation. In the context of Covid-19, he reached the preliminary view that it was appropriate to decide whether the FtT had erred in law, on the papers, without the need for a hearing and issued directions asking for the parties' views. Upper Tribunal Judge Coker issued further directions on 11<sup>th</sup> September 2020. It is unclear from the appellant's response dated 25<sup>th</sup> September 2020 whether he objected to the issue of whether the FtT erred in law being decided on the papers, but in any event, in her Rule 24 response dated 30<sup>th</sup> September 2020, the respondent has conceded that the FtT erred in law materially and the respondent had no objection to remaking being remitted without preserved findings of fact. The respondent made clear that she continued to assert that the marriage was one of convenience and added that the sponsor's exercise of treaty rights was in dispute.
5. I have considered again the present need to take precautions against the spread of Covid-19; the overriding objective expressed in the Procedure Rules; the Pilot Practice Direction (PPD) issued by the Senior President of Tribunals on 19<sup>th</sup> March 2020; and the High Court's decision in Joint Council for the Welfare of Immigrants v The President of the Upper Tribunal (Immigration and Asylum Chamber) [2020] EWHC 3103 (Admin) (particularly the conclusion at paragraph 8.1). I regard it as appropriate to decide on the papers, without the need for a hearing, whether the FtT erred in law, such that his decision should be set aside without preserved findings of fact, as the respondent expressly concedes this in her Rule 24 response, and that is a concession which, for reasons I set out below, is rightly made. In the circumstances, a hearing to decide whether there has been an error of law is unnecessary, disproportionate and not in accordance with the overriding objective.

### **Discussion and conclusions**

6. Central to this case is the couple's credibility. Where there is potentially corroborative evidence of that credibility, that is relevant to the issue in dispute and it is incumbent on an FtT to assess that evidence and explain the weight it attaches to that evidence and if it is disbelieved or regarded as not accurate, why that is the case. In this case, the FtT referred explicitly to the witness statement of a witness, Ms Sneeha Day, at §7 of his decision, but failed to make any reference to, or analyse, her evidence further. The respondent accepts in the Rule 24 response that the credibility assessment was materially undermined as a result, a concession which I regard as realistic. While the FtT's decision was otherwise well-structured and explained, that flaw undermines the entirety of the assessment (as credibility must be assessed in light of all the evidence), so none of the findings are safe.

### **Decision on error of law**

7. In my view there are material errors here and I must set the FtT's decision aside, without preserved findings of fact.

### **Disposal**

8. With reference to paragraph 7.2 of the Senior President's Practice Statement and the necessary fact-finding, (there are no preserved findings, and the assessment of the appellant's credibility must be made afresh), this is clearly a case that has to be remitted to the First-tier Tribunal for a complete rehearing.
9. The remittal shall involve a complete rehearing of the appeal. All aspects of the claims must be addressed.

### **Notice of Decision**

**The decision of the First-tier Tribunal contains material errors of law and I set it aside.**

**I remit this appeal to the First-tier Tribunal for a complete rehearing.**

### **Directions to the First-tier Tribunal**

**This appeal is remitted to the First-tier Tribunal for a complete rehearing with no preserved findings of fact.**

**The remitted appeal shall not be heard by First-tier Tribunal Judge Hanbury.**

**No anonymity direction is made.**

Signed *J Keith*

Date: 23<sup>rd</sup> June 2021

Upper Tribunal Judge Keith