



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

Appeal Number: IA/46725/2013

THE IMMIGRATION ACTS

**Heard at Field House
On 23rd May 2014**

**Determination Promulgated
On 6th June 2014**

Before

UPPER TRIBUNAL JUDGE COKER

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

And

TOCHUKWU ROY AGADA

Respondent

Representation:

For the Appellant: Mr C Avery, Senior Home Office Presenting Officer
For the Respondent: Mr C Ikehikechukwu of Moorehouse solicitors

DETERMINATION AND REASONS

1. The appellant (hereafter the SSHD) appeals a decision of the First-tier Tribunal which allowed an appeal by the respondent (hereafter the claimant) against a decision to refuse to vary his leave to remain as the spouse of a British citizen on the grounds that the claimant had been living with his wife during the past two years and the relationship was subsisting.
2. Permission to appeal had been granted on the basis that it was arguable that the First-tier Tribunal Judge had failed to give adequate reasons why he was satisfied that the marriage was subsisting in the light of the evidence before him.

In particular the judge had referred in general terms to inconsistent answers given by the couple to questions as to their relationship, to witness statements explaining the discrepancies without stating whether and if so why he accepted those explanations and had also, again in general and non specific terms, stated that there was overwhelming evidence that the marriage was genuine subsisting.

3. Although the judge refers to other documents and to having read all the documents presented to him he gives no indication what the discrepancies were, what the explanation for the discrepancies was and why (if he does) he accepts that explanation and what other evidence there was that could result in his finding that there was overwhelming evidence that the marriage was genuine and subsisting. Although referring in the determination to the possible need to refer to documents in the court file, this is hardly an adequate indication that the judge has undertaken an assessment of those documents in reaching his decision; it is merely a statement that that there are documents and records present.
4. Although a judge is not required to spell out each and every piece of evidence it is incumbent upon a judge to give some indication of the evidence and reasons for the conclusions reached and for there not to be a contradiction in his findings. To fail to do so amounts to an error of law.
5. Although the grounds seeking permission to appeal refer to a failure to give any reason why the appeal was allowed under Article 8, this would not amount to an error of law had the judge drawn proper reasoned findings for his findings that the claimant met the requirements of the Immigration Rules. As it is the failure to make such findings under the Rules renders the decision under Article 8 an error.
6. I set aside the decision to be remade.
7. The scheme of the Tribunals Court and Enforcement Act 2007 does not assign the function of primary fact finding to the Upper Tribunal.
8. The Practice Statement dated 25th September 2012 of the Immigration and Asylum Chamber First-tier Tribunal and Upper Tribunal states:

7.2 The Upper Tribunal is likely on each such occasion to proceed to re-make the decision, instead of remitting the case to the First-tier Tribunal, unless the Upper Tribunal is satisfied that:

(a) the effect of the error has been to deprive a party before the First-tier Tribunal of a fair hearing or other opportunity for that party's case to be put to and considered by the First-tier Tribunal; or

(b) the nature or extent of any judicial fact finding which is necessary in order for the decision in the appeal to be re-made is such that, having regard to the overriding objective in rule 2, it is appropriate to remit the case to the First-tier Tribunal.

9. In the light of the absence of total reasoned fact finding by the First-tier Tribunal I remit the appeal to be determined afresh by the First-tier Tribunal.

10. I make no further directions save that it not be heard by Judge K W Brown.

Conclusions:

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

I set aside the decision

I remit the appeal to be heard afresh by the First-tier Tribunal.

Consequential Directions

Not to be heard by First-tier Tribunal Judge K W Brown.

Date 5th June 2014

Judge of the Upper Tribunal Coker