



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

Appeal Number: IA/01935/2014

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 26 February 2015**

**Decision & Reasons  
Promulgated  
On 3 March 2015**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE SHAERF**

**Between**

**SOMCHAI THONSANTHIA  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mrs S Bassiri-Dezfouli of Counsel by Direct Access  
For the Respondent: Mr S Walker of the Specialist Appeals Team

**DECISION AND REASONS**

**The Appellant**

1. The Appellant is a citizen of Thailand born on 15 February 1971. There is a dearth of information in the Tribunal file when the Appellant first came to the United Kingdom and on what basis. On 5 October 2009 he was

granted discretionary leave to remain on the basis of his marriage by way of reference to his rights to a private and family life protected by Article 8 of the European Convention. On 3 September 2012 he applied for further leave to remain on the basis of his marriage. On 13 December 2013 the Respondent refused that application and proposed to make directions for his removal to Thailand. By a letter of the same date (the reasons letter) the Respondent gave reasons for the decision which was based on her view that the Appellant had failed to provide sufficient documentary evidence to support the claim that his relationship with his wife was genuine and subsisting. He was therefore refused by way of reference to paragraph E-LTRP.1.7. of Appendix FM to the Immigration Rules. His application was also refused by way of reference to paragraph 276ADE(1) of the Immigration Rules because he did not satisfy the length of residence requirements. The Respondent considered there were no exceptional circumstances to warrant consideration of his claim under Article 8 of the European Convention outside the Immigration Rules.

### **The First-tier Tribunal Determination**

2. The Appellant appealed under Section 82 of the Nationality, Immigration and Asylum Act 2002 as amended (the 2002 Act). The grounds are brief and formulaic.
3. By a determination promulgated on 12 August 2014 Judge of the First-tier Tribunal Coleman found the Appellant had not shown his marriage was subsisting and dismissed the appeal.
4. By a decision of 1 October 2014 Judge of the First-tier Tribunal Lambert refused the Appellant permission to appeal. The permission application was renewed to the Upper Tribunal and on 12 January 2015 Upper Tribunal Judge Grubb granted permission to appeal on the basis that the grounds identified arguable errors of law in the Judge's assessment of the evidence which led her to make adverse findings against the Appellant and his wife.

### **The Upper Tribunal Hearing**

5. At the start of the hearing Mr Walker for the Respondent produced a copy of the determination of Immigration Judge Dawson in appeal number TH/00500/2006 promulgated on 24 April 2006 by which he found the Appellant and his wife were then in a genuine and subsisting relationship. On that basis Mr Walker submitted the Respondent had not been aware of the facts in 2006 when the decision now under appeal was made. He therefore remitted the case to the Respondent. Mr Walker advised that consequent upon that determination the Respondent had granted the Appellant further leave to remain. Mr Walker referred me in particular to paragraphs 19 and 25 of Judge Dawson's determination and that the Respondent had not sought to challenge the findings in those paragraphs.
6. Both parties acknowledged that Judge Dawson's determination had not been put before Judge Coleman and consequently through no fault of her

own her determination had made no reference to it. This was an error of law resulting in an unfair consideration of his appeal by the First-tier Tribunal. The parties agreed that this was a material error of law and that the appeal should be remitted to the First-tier Tribunal for hearing afresh with no findings preserved.

### **Anonymity**

7. There was no request for an anonymity order and having considered the matter I find none is warranted.

### **NOTICE OF DECISION**

**The determination of the First-tier Tribunal contained a material error of law such that it should be set aside in its entirety. The appeal is remitted to the First-tier Tribunal for hearing afresh before any Judge other than Judge Coleman.**

Signed/Official Crest  
2015

Date 02. iii.

Designated Judge Shaerf  
A Deputy Judge of the Upper Tribunal