



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

Appeal Number: IA/06871/2014

THE IMMIGRATION ACTS

Heard at Field House

On 17th April 2015

**Decision & Reasons
Promulgated
On 30th April 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE LEVER

Between

**MR SYED SAULAT ABBAS NAQVI
(ANONYMITY NOT RETAINED)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: No representation
For the Respondent: Miss Savage

DECISION AND REASONS

Introduction

1. The Appellant born on 10th October 1983 is a citizen of Pakistan. Neither the Appellant nor his legal representatives were present. The Respondent was represented by Miss Savage a Presenting Officer.

Substantive Issues under Appeal

2. The Appellant had made application on 26th June 2013 for a residence card as confirmation of a right to reside in the United Kingdom. That application had been refused by the Respondent by a refusal letter dated 21st January 2014. The Appellant had appealed that decision and an appeal was heard on the papers before First-tier Tribunal Judge Dean with a decision promulgated on 23rd September 2014. He had dismissed the Appellant's appeal. Permission to appeal had been lodged by the Appellant's solicitors. Permission to appeal was granted by First-tier Tribunal Judge Hollingworth on 23rd January 2015 on the basis that an arguable error of law had been made in this case by the refusal of the judge to adjourn the matter when it appeared that the Respondent had evidence that had not been forwarded to the Tribunal.
3. Directions were issued for the Upper Tribunal to firstly decide whether or not an error of law had been made in this case and the matter comes before me in accordance with those directions.

The Proceedings - Introduction

4. There was no explanation for the absence of the Appellant or his legal representatives. There was no evidence on file to suggest the legal representatives had withdrawn or were no longer representing the Appellant and their failure to attend would therefore on the face of matters require some clear explanation.
5. Miss Savage made application to withdraw the Respondent's decision in this case and sought permission so to do in accordance with Rule 17 of the Upper Tribunal Procedural Rules. Having appraised myself of the background to this case I agreed but indicated that I would set out the circumstances in a written decision so that matters were clear in terms of any future conduct of this case. I now provide that decision with the reasons.

Decision and Reasons

6. I have agreed to the Respondent's withdrawal of their decision in this case because it is clear that a number of procedural mistakes have been made in the manner in which this case has thus far proceeded through the appeal process.
7. The Appellant had originally entered the United Kingdom in August 2004 with leave as a student. He had been granted further leave as a student but his last application in that capacity was refused on 9th January 2009 and his appeal was dismissed on 20th March 2009. Thereafter the Respondent does not appear to have removed the Appellant with no explanation for that failure.
8. The Appellant had then made further applications relating to his alleged marriage to a Latvian citizen and on 6th January 2012 had applied for a residence card.

9. The Respondent had refused that application made by the Appellant for a residence card on the basis that the documentation presented by the Appellant did not disclose that his wife, a Latvian citizen, was exercising treaty rights in the UK as claimed or at all. There does not appear to have been an appeal lodged by the Appellant in respect of that refusal.
10. Thereafter, again the Respondent having failed to remove the Appellant, the Appellant made a fresh application for a residence card as the spouse of a Latvian citizen on 26th June 2013. That application had also been refused by the Respondent and the refusal letter is dated 21st January 2014. On this occasion the refusal was on the basis that the Respondent did not accept that the Appellant and his spouse were in a genuine relationship. They had interviewed the Appellant and his wife on 10th December 2013, and as the refusal letter notes, the result of answers given by the Appellant and his wife at that interview raised profound and serious concerns as to the genuineness of this marriage. The Appellant had appealed that decision.
11. At the hearing before the First-tier Tribunal the Appellant failed to appear. There was no explanation provided for his absence. There was a letter from the Appellant's legal representatives SAJ Law Chambers who may have recently at that stage taken conduct of the case. Their letter requested an adjournment and they included an email from the Home Office who had indicated that for technical reasons a transcript of the interview of 10th December 2013 was unavailable. Regrettably those solicitors did not attend at the hearing before the First-tier Tribunal. The judge had refused the written request for an adjournment and had proceeded to deal with the case on the papers before him. Having examined the documents that were before the First-tier Tribunal Judge it is understandable why he refused the adjournment request and the absence of the Appellant or his solicitors at the hearing did not provide any further information that may have uncovered the difficulty in this case.
12. In summary the judge only had the Respondent's bundle. There were no documents from the Appellant. The Respondent's bundle unfortunately contained the original application form and documentation that related to the earlier application made by the Appellant where refusal had been on the basis that there was no evidence of the Appellant's spouse exercising treaty rights as claimed. On the basis of the evidence before him and in the belief that that was the extant appeal the judge very properly dismissed the appeal in accordance with the evidence available before him. It is clear the judge was unaware of the later application in June 2013 and the Respondent's refusal of 26th January 2014 which was the subject matter of the appeal that should have been heard by the First-tier Tribunal Judge. He did not have that refusal letter and was accordingly, it would seem, unaware of the later application or the basis of the Respondent's refusal namely deep concerns regarding the genuineness of this marriage. The basis of the Respondent's concerns were the interviews conducted on 10th December 2013 with the Appellant and his wife. In accordance with case law the transcripts of those interviews needed to be disclosed both to

the Appellant and to the Tribunal together with any summary made by the interviewing officer and passed to the decision maker. It is clear that the email from the Respondent relating to technical problems was a reference to technical problems in obtaining a transcript of those interviews. I am informed that because of those difficulties it is no longer possible to obtain transcripts of those interviews and the Respondent's position therefore is a withdrawal of their decision, presumably so they can begin matters afresh in this case.

13. In summary therefore an error of law was made by the First-tier Tribunal Judge in that he was dealing with evidence in relation to a matter that does not appear to ever have been appealed whilst being unaware of the evidential material and basis of refusal of the Respondent's decision that have given rise to the appeal. It is with regret that it should be noted that at no stage was the judge assisted either by the Respondent nor by the absence of both the Appellant and his legal representatives who absence was notable, again, at the hearing before me.
14. I therefore agree to the Respondent's request to withdraw their decision and have set out above the background to this matter for reference purposes in the future.

Notice of Decision

It is agreed that the Respondent should be allowed to withdraw their decision in this case.

No anonymity direction is made.

Signed

Date

Deputy Upper Tribunal Judge Lever