



IAC-FH-CK-V1

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

Appeal Number: IA/37369/2014

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 13<sup>th</sup> October 2015**

**Decision & Reasons Promulgated  
On 21<sup>st</sup> October 2015**

**Before**

**UPPER TRIBUNAL JUDGE BLUM**

**Between**

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

**Appellant**

**and**

**MR TANVEER AKHTER  
(ANONYMITY DIRECTION NOT MADE)**

**Respondent**

**Representation:**

For the Appellant: Ms J Isherwood, Home Office Presenting Officer

For the Respondent: Ms S Nasim, Counsel instructed by Whitefields Solicitors

**DECISION AND REASONS**

1. This is an appeal against the decision of Judge of the First-tier Tribunal Metzger, who in a determination promulgated on 5<sup>th</sup> May 2015, allowed Mr Akhter's appeal against a decision by the Secretary of State to refuse to issue him a residence card as confirmation of his right to reside in the UK as the unmarried partner of an EEA national exercising treaty rights under Regulation 8(5) of the Immigration (EEA) Regulations 2006. The Secretary of State for the Home Department is the appellant in this hearing and Mr Akhter is the respondent. However, for the sake of convenience,

I will refer to Mr Akhter as the claimant and the Secretary of State for the Home Department as the respondent.

2. The claimant is a citizen of Pakistan date of birth 24<sup>th</sup> September 1977. He entered the United Kingdom on 29<sup>th</sup> January 2008 as a Tier 4 Student. He met his wife Marina Bandzinaite in 2010 and their relationship commenced in June of that year. They underwent an Islamic marriage on 8<sup>th</sup> December 2012.
3. Following his application for the residence card immigration officers visited the property identified by the claimant as that in which he and his partner lived. The claimant was not present and, as a result of a conversation with somebody present at that property, the immigration officers formed the view that the relationship was not genuine and that the marriage was one of convenience.
4. Aggrieved with that decision the claimant appealed to the First-tier Tribunal. His appeal was heard on 13<sup>th</sup> April 2015 where he was represented by Ms Nasim, who represents the claimant at the hearing before the Upper Tribunal. The Secretary of State was not represented.
5. A bundle of documentation had been prepared on behalf of the claimant which was considered by the judge. The claimant was asked a number of questions. Having considered the documentary and oral evidence before him the judge concluded that the marriage was genuine. As a direct consequence of this finding the judge allowed the appeal outright.
6. The Secretary of State took issue with this approach. In her grounds of appeal the Secretary of State relied on the case of **Ihemedu (OFMs - meaning) Nigeria [2011] UKUT 00340**. This case indicates that once a Tribunal has concluded that the disputed EEA relationship is in fact genuine it is not entitled to allow the appeal outright. The matter has to be returned to the Secretary of State to enable her to exercise her discretion under the Immigration (European Economic Area) Regulations 2006 in light of the Tribunal's findings of fact and in light of all the circumstances.
7. I have been greatly assisted by Ms Nasim and by Ms Isherwood representing the Secretary of State. Ms Nasim did not seek to persuade me that the First-tier Tribunal had not, in light of **Ihemedu**, committed an error of law. She accepted that the Judge's failure to remit the matter back to the Secretary of State was material.
8. Ms Isherwood confirmed that the Secretary of State for the Home Department did not challenge the substantive findings by the judge in respect of the claimant's relationship with his partner relationship.
9. In these circumstances I am satisfied that there is a material error of law in the determination and that the appeal is allowed to the extent that it is remitted back to the Secretary of State to enable her to reach a lawful decision in light of the judge's factual findings.

**Notice of Decision**

**The Secretary of State's appeal is allowed to the extent that the matter will be remitted back to the Secretary of State to enable her to exercise her discretion in light of the judge's findings.**

No anonymity direction is made.



Signed

21 October 2015

Date

Upper Tribunal Judge Blum

**TO THE RESPONDENT**  
**FEE AWARD**

As the claimant's appeal has been allowed and because a fee has been paid or is payable, I have considered making a fee award and have decided to make a whole fee award of £140 as the Secretary of State was not entitled to her conclusion that the claimant's relationship was not genuine.



Signed

21 October 2015

Date

Upper Tribunal Judge Blum