



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: EA/08102/2016

THE IMMIGRATION ACTS

Heard at Field House
On 27th October 2017 and
Given extempore. Signed
and sent to Promulgation
on 8th November 2017.

Decision & Reasons Promulgated
On 9th November 2017

Before

Upper Tribunal Judge Chalkley

Between

GURPREET SINGH
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant:

Mr E Raw, Counsel, instructed by AKL Solicitors

For the Respondent:

Mr P Duffy Home Office Presenting Officer

REASONS FOR FINDING AN ERROR OF LAW

Background

1. The appellant is a citizen of India who was born on 2nd September 1992. He made application to the respondent for a residence card as the family member of an EEA national on 3rd January 2013. This was granted on 4th March 2013 and as a result he

was issued with a residence card until 4th March 2018. The respondent served the appellant with a decision to remove him dated 20th June 2016. Unfortunately, that notice did not explain why the respondent had decided to remove the appellant. It transpires that the respondent had conducted a search of an address and spoken to the appellant's claimed wife. She confessed that she had been paid £10,000 to enter into a false marriage with the appellant. She said that she had never lived with him. Officers also spoke to the appellant at his address and he claimed that he had entered into a genuine marriage and that she was saying that simply to 'get' at him. He claimed to have divorced her in February 2016, and said that all the paperwork was at his solicitors.

The First Tier Tribunal hearing

2. As a consequence, the respondent was satisfied that the marriage was one of convenience and decided to revoke the residence card. The appellant appealed and his appeal was heard by First-tier Tribunal Judge Woolley sitting at Newport on 25th July 2017. The appellant did not attend and was not represented.
3. At the hearing, the respondent produced and relied upon evidence which had not been supplied earlier to the appellant. That evidence consisted of a record of the immigration visit at interview conducted with the appellant's wife. The judge took that evidence into account, notwithstanding the fact that it had not been supplied to the appellant.
4. Mr Duffy accepted today that that amounted to a material error of law. It was wrong for the judge to consider evidence which had not been supplied to the appellant or to his advisors, because the appellant had been denied the opportunity of making a response and commenting on it.
5. It has been suggested to me on behalf of the appellant by Mr Raw that because the judge fell into error and accepted the evidence which had not been seen by the appellant, I should simply allow the appeal today. He suggested that instead of hearing the appeal and considering the fresh evidence, the First Tier Tribunal Judge could have adjourned to give the respondent time to serve the evidence on the appellant or in the alternative could have simply allowed the appellant's appeal outright.
6. I am satisfied that there is a material error of law in the judge's decision such that the appellant has been denied a fair hearing. The judge was wrong to consider evidence which had not been supplied to the appellant. He has been denied the opportunity of commenting on it. The judge should have adjourned the hearing until such time as the appellant and his solicitors had been served with copies of it, in order that he might respond to it.
7. There would have been no basis on which the First Tier Tribunal Judge could have allowed the appellant's appeal outright. The respondent was entitled to ask the

judge to consider new evidence prior to the conclusion of the hearing. It would equally have been wrong of the judge to deny the respondent the opportunity of adducing the evidence.

- 8 There is no basis upon which I can allow the appellant's appeal outright now. The respondent wished to rely on fresh evidence and is entitled to have that evidence considered.
- 9 My decision is that the matter will be remitted to the First-tier Tribunal and to be heard afresh by a judge **other than First-tier Tribunal Judge C J Woolley**. No interpreter is required.
10. One and a half hours should be allowed to the hearing of the appeal.

Richard Chalkley

Upper Tribunal Judge Chalkley

I DIRECT THAT the respondent shall file with the First Tier Tribunal and serve on the appellant and those representing him, with a copy of the additional evidence of the appellant's former wife if reliance is to be placed upon such evidence.

Richard Chalkley

Upper Tribunal Judge Chalkley