



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

Appeal Number: EA/06081/2018

THE IMMIGRATION ACTS

**Heard at Field House
On 6 November 2019**

**Decision & Reasons Promulgated
On 15 November 2019**

Before

**UPPER TRIBUNAL JUDGE PITT
UPPER TRIBUNAL JUDGE RINTOUL**

Between

**ZAIM DASHAJ
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr C Mupara, Counsel, instructed by Reiss Edwards Ltd
For the Respondent: Ms A Fijiwala, Home Office Presenting Officer

DECISION AND REASONS

1. This is an extempore decision. The appeal is brought against the decision of First-tier Tribunal Judge Bartlett dated 13 June 2019 which refused the appeal of the appellant against the respondent's decision of 8 May 2018 to refuse a residence card showing the appellant's status as the spouse of an EEA national exercising Treaty rights.
2. In this matter the appellant and his partner were invited to an interview by the respondent. They both attended the interview. During the course of this appeal they were provided with a transcript of the interview record.

They responded to that transcript in witness statements. The appellant's statement is dated 1 April 2019 and is pages 93 to 95 of his bundle of evidence. The statement of his partner is dated 1 May 2019 and is at pages 97 to 99 of the appellant's bundle. Those statements set out the evidence of the appellant and his partner on the specific allegations of inconsistency in the interview records which the respondent relied upon in the refusal letter.

3. The appellant and his wife also gave oral evidence at the hearing before First-tier Tribunal Bartlett.

4. The decision of First-tier Tribunal Judge Bartlett reads as follows in paragraph 15:-

"The respondent's refusal letter identified a number of areas in which it was claimed that the appellant and his wife's answers were inconsistent. In witness statement evidence and oral evidence the appellant and his wife sought to provide evidence which was wholly consistent with each other. It is easy to do this after inconsistencies have been identified and I attach little weight to the witness statement and oral evidence which seeks to provide different evidence on the areas of inconsistency identified by the respondent."

5. The appellant's ground 5 argued that this approach disclosed a material error of law. It was maintained that finding the evidence in the witness statements and the oral evidence given at the hearing to be inherently unreliable because it was provided after the inconsistencies had already been pointed out to the appellant and his wife was irrational. It was only then that they knew the case that they had to answer. The appellant and his wife were entitled to address the case made against them in the witness statements and at the hearing and the substance of the witness statements had to be considered and weighed, even if not in the appellant's favour, rather than being rejected outright as inherently unreliable.

6. We were in agreement with the appellant that the approach taken by Judge Bartlett in paragraph 15 to the witness statement evidence was irrational and on that ground we find sufficient reason to set aside the decision of the First-tier Tribunal.

7. As the error of law undermines the overall finding on credibility and whether the appellant was in a marriage of convenience and where the views of the parties were that the proper disposal of this matter was for a re-making in the First-tier Tribunal, we concluded that the matter should be remitted to the First-tier Tribunal.

8. Notice of Decision

The decision of the First-tier Tribunal discloses a material error on a point of law and is set aside to be re-made in the First-tier Tribunal.

Signed: 
Upper Tribunal Judge Pitt

Date: 12 November 2019