



**Upper Tribunal  
(Immigration and Asylum Chamber)  
HU/15195/2017**

**Appeal Number:**

**THE IMMIGRATION ACTS**

**Heard at** Field House  
**On** 4 February 2019

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

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE DOYLE**

**Between**

**RKIA MOUTAOUAKEL  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**ENTRY CLEARANCE OFFICER - Sheffield**

Respondent

**Representation:**

For the Appellant: Mr A A Khan (counsel) instructed by Morden solicitors  
For the Respondent: Mr P Duffy, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. I have considered whether any parties require the protection of an anonymity direction. No anonymity direction was made previously in respect of this Appellant. Having considered all the circumstances and evidence I do not consider it necessary to make an anonymity direction.

2. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge Jones QC promulgated on 31/10/2018, which dismissed the Appellant's appeal on all grounds.

## Background

3. The Appellant was born on 28/06/1968 and is a national of Morocco. On 03/08/2017 the Secretary of State refused the Appellant's application for leave to remain in the UK as the spouse of a person with indefinite leave to remain in the UK.

## The Judge's Decision

4. The Appellant appealed to the First-tier Tribunal. First-tier Tribunal Judge Jones QC ("the Judge") dismissed the appeal against the Respondent's decision. Grounds of appeal were lodged and on 14/12/2018 Judge O'Brien gave permission to appeal stating inter alia

The Judge records at paragraph 4 that the ECO's incorrect financial calculation was not pursued at the appeal. However, it was a prominent and central ground of appeal and was repeated in clear terms in the appellant's witness statement. No concession on the point is recorded in the Judge's note. It is arguable that the Judge has failed to make findings on a material point in issue.

## The Hearing

5. (a) As soon as Mr Khan moved the grounds of appeal, Mr Duffy told me that a rule 24 response had been served which accepts that the Judge's decision contains a material error of law. He asked me to set the decision aside and remit this case to the First-tier Tribunal for fresh fact-finding.

6. (a) Mr Khan asked me to substitute my own decision rather than remit this case to the First-tier Tribunal. He told me that this case is far from complicated and that the only issue is the calculation of income to determine whether the sponsor can adequately maintain the appellant. Mr Khan took me to paragraph 4 of the grounds of appeal and referred me to page 50 of the respondent's bundle, which discloses the award of personal independence payment made to the sponsor.

(b) I mentioned to Mr Khan that the respondent's decision is not restricted to the question of maintenance. The respondent does not accept that there is a genuine and subsisting relationship between the appellant and sponsor. Mr Khan told me that the Judge's decision implicitly accepts that there is a genuine and subsisting relationship. He urged me to preserve a finding that the relationship between the appellant and sponsor is genuine and to deal with the financial aspects of this appeal.

## Analysis

7. On 12 May 2017 the appellant applied for entry clearance as the spouse of the sponsor, Mr M P Nahavadi. On 3 August 2017 the respondent refused the appellant's application saying that the appellant does not meet the eligibility relationship requirement set out in paragraph

E-ECP2.1 to 2.10 of the immigration rules, because the respondent believes that the appellant and sponsor did not meet before 19 January 2016. The respondent says

“I therefore am not satisfied your relationship with your sponsor is genuine and subsisting or that you intend to live together permanently in the UK.”

8. The respondent’s decision maker then turned to the adequacy of maintenance and carries out a calculation of income before concluding that the sponsor’s income is less than the level of Income Support available to a British family of equivalent size, so that the maintenance requirements of the immigration rules are not met.

9. The Judge’s decision contains two material errors of law. The first is that the Judge refers to the dispute over the calculation of income at [4] of the decision, and then declines to engage with one of the central issues in this appeal. The grounds of appeal to the First-tier Tribunal clearly challenged the entry clearance officer’s arithmetic. The appellant’s witness statement provides the appellant’s evidence about the level of his income. The Judge made no findings in relation to the appellant’s income, and so elided the question of adequacy of maintenance.

10. The second material error of law is that the challenge to the relationship between the appellant and sponsor is not dealt with at all by the Judge.

11. The Judge failed to engage with two core issues which were in dispute. That is a material error of law. I set the decision aside.

12. I consider whether I can substitute my own decision. The dispute about the adequacy of maintenance is clearly focused but there is insufficient evidence before me about the genuine nature of relationship and whether or not that relationship is subsisting. The financial evidence is dated. Evidence is required about the nature and quality of relationship. The material errors in the decision relate to an inadequacy of fact finding. I cannot substitute my own decision. A further fact-finding exercise is necessary.

### Remittal to First-Tier Tribunal

13. Under Part 3 paragraph 7.2(b) of the Upper Tribunal Practice Statement of the 25<sup>th</sup> of September 2012 the case may be remitted to the First-tier Tribunal if the Upper Tribunal is satisfied that:

(a) the effect of the error has been to deprive a party before the First-tier Tribunal of a fair hearing or other opportunity for that party’s case to be put to and considered by the First-tier Tribunal; or

(b) the nature or extent of any judicial fact finding which is necessary in order for the decision in the appeal to be re-made is such that, having regard to the overriding objective in rule 2, it is appropriate to remit the case to the First-tier Tribunal.

14. In this case I have determined that the case should be remitted because a new fact-finding exercise is required. None of the findings of fact are to stand and a complete re hearing is necessary.

15. I remit the matter to the First-tier Tribunal sitting at Hatton Cross to be heard before any First-tier Judge other than Judge Jones QC.

**Decision**

**16. The decision of the First-tier Tribunal is tainted by material errors of law.**

**17. I set aside the Judge's decision promulgated on 31 October 2018. First-tier Tribunal to be determ**



Signed  
February 2019

Date 13

Deputy Upper Tribunal Judge Doyle