



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

**Appeal Number: IA/35125/2014**

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 29<sup>th</sup> September 2015**

**Decision & Reasons Promulgated  
On 30<sup>th</sup> September 2015**

**Before**

**UPPER TRIBUNAL JUDGE COKER**

**Between**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

**Appellant**

**And**

**SAMER MIKHAILE**  
(Anonymity order not made)

**Respondent**

**Representation:**

For the Appellant: Mr P Duffy, Senior Home Office Presenting Officer  
For the Respondent: Mr P Ward, James & Co solicitors

**DETERMINATION AND REASONS**

1. The Secretary of State (SSHD) was granted permission to appeal a decision by FtT Judge M P W Harris who allowed Mr Mikhaile's appeal against a decision to refuse to issue him with a residence card under the Immigration (European Economic Area) Regulations 2006 (the EEA Regulations).

Background

2. Mr Mikhaile sought a residence card following his marriage to Ms Simono Borriello, an Italian citizen. The couple were interviewed by a representative of the

SSHD. The judge had a bundle of documents from the respondent which included records of the interviews carried out. He also had documentary evidence from the couple and heard oral evidence from them and from Ms Boriello's mother.

#### Error of law

3. The SSHD sought and was granted permission on the grounds that the reasons given by the judge were inadequate; he should have 'gone into greater detail concerning the discrepancies identified in the reasons for refusal letter and the reasons for allowing the appeal despite these discrepancies'.
4. The judge in his decision records that the SSHD did not attend the hearing. He comments ([13]) that it would have been easier had the interview records been put before him in a format which placed them alongside one another. He confirms he has read the records and that the discrepancies itemised in the decision letter were present. He also records that the couple were asked over 250 questions each and that there were a considerable number of answers which were not identified as being of concern. The judge finds that the 'unproblematic' answers are consistent with the marriage being genuine.
5. The judge further states that the problematic answers should be weighed against the unproblematic ones in his overall assessment ([13]). He accepted that evidence of cohabitation does not of itself show a marriage to be genuine but it does support such a claim ([14]). In [15] the judge states that he found the evidence of Mrs Sprano (Mr Mikhaile's mother in law) credible and that she gave significant corroboration that the couple lived together 'genuinely as husband and wife' 'having spent a month living with them in this country'. In [17] the judge refers to the oral evidence and witness statement evidence providing plausible explanations for the noted discrepancies and found the couple to each be credible witnesses.
6. Although the judge has not set out in detail exactly what discrepancies were identified by the SSHD and what were not discrepancies, it is plain from the decision that the judge had read and taken account of and considered the evidence before him both oral and documentary. He referred in the decision to the reasons given by the SSHD for not believing that the marriage was genuine, albeit not reproducing the SSHD's decision.
7. The SSHD relies upon *Budhathoki* [2014] UKUT 00341 (IAC) as support for her proposition that the judge failed to "identify and resolve key conflict in the evidence and explain in clear and brief terms their reasons, so that the parties can understand why they have won or lost". The judge in an albeit brief judgment identified the conflicting evidence by reference to documents submitted by the SSHD. He made clear credibility findings. There can be no doubt as to the reasons why the judge allowed the appeal and this is plainly apparent from the decision.
8. The SSHD is simply disagreeing with the outcome of the appeal.
9. There is no error of law.

10. There is no error of law in the decision of the FtT judge.
11. I do not set aside the decision.
12. The decision of the FtT stands.

Date 29<sup>th</sup> September 2015

A handwritten signature in black ink, appearing to read "Jane Coker". It is enclosed in a thin rectangular border.

Upper Tribunal Judge Coker