



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

Appeal Number: IA031022015  
IA015432015

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 16 May 2016**

**Decision & Reasons  
Promulgated  
On 24 May 2016**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE MAHMOOD**

**Between**

**Ms ERJOLA VIJA  
Mr ANTONIO VALENTE  
(Anonymity Direction Not Made)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Ms A Jones, Counsel instructed by Malik and Malik  
Solicitors  
For the Respondent: Mr S Whitwell, Senior Presenting Officer

**DECISION AND REASONS**

1. In this matter First-tier Tribunal Judge Ford had heard these appeals together. Two decisions were prepared. She had allowed the appeal of Mr Valente and had dismissed the appeal of Ms Vija. Both parties appealed against the decision which had gone against them. Permission to appeal was granted by First-tier Tribunal Judge Gillespie to both parties.
2. To ease following this decision I shall continue to refer to the claimants as the Appellants and the Secretary of State as the Respondent.
3. The relevant background to this matter is that Ms Vija, a citizen of Albania, had applied for a residence card as the partner of Mr Valente an EEA citizen of Italy. The Respondent had contended that this was a sham marriage. It was alleged that Mr Valente was not exercising treaty rights. The couple had been detained by Home Office officials at a Registry Office as they were attempting to go through a ceremony of marriage.
4. The Judge heard evidence from both Appellants. She concluded that there were various inconsistencies that were not adequately dealt with and that the marriage between the Appellants was not a genuine one. As a consequence the requirements to show that there was a durable relationship was not met either. The Judge went on to conclude that the Mr Valente was not exercising treaty rights in the United Kingdom because of issues in respect of his documents and evidence.
5. The Judge thereby went on to dismiss Ms Vija's appeal. However she allowed Mr Valente's appeal. That was because she concluded that as the burden of proof was on the Secretary of State to prove that this was a sham marriage case then the IS151A document had to be produced. It had not been filed and the Presenting Officer did not have a copy either. The Judge therefore allowed the appeal.
6. The Respondent's appeal against the Judge's decision in Mr Valente's case raises grounds which can be summarised as contending that there was a material misdirection in law because the Mr Valente had been served with an IS151A informing him of his liability to detention and removal. Having concluded that the marriage was a marriage of convenience in Mrs Vija's appeal then the Judge made a contradictory decision in Mr Valente's appeal. It was submitted that Mr Valente was as responsible for the missing IS151A as the Secretary of State was.
7. The Appellant's appeal against the Judge's decision in Mrs Vija's case raised numerous grounds which can be summarised as contending firstly that there was an inconsistent decision because the appeal of Mr Valente had been allowed. Secondly, the Judge said she would not take into account the intrusive line of questioning referred to in the Immigration Office's pocket notebook entries but then proceeded to do so in her adverse findings. Thirdly there were other unsustainable findings.

8. At the hearing before me Mr Whitwell provided me with a copy of the IS151A.
9. I heard submissions from both representatives. Ms Jones pointed out that both parties noted that the Judge had made contradictory findings in the two different decisions. She said that it was the Appellants' case that both appeals should therefore have been allowed whereas it was the Respondent's case that both appeals should have been dismissed. Mr Whitwell also made submissions which I noted in my Record of Proceedings.
10. I had reserved my decision.
11. It is quite clear to me that the Judge was perfectly correct to state that when allegations as serious as the claim that there has been a sham marriage are made and when there has been the disruption of a marriage ceremony at a Registry Office, then the Respondent retains the burden of prove in respect of such a serious allegation. It also means that the Respondent has to ensure that all of the relevant documents are produced and the allegation is proved. The Tribunal is independent of the Respondent and cannot be expected to plug gaps left in that exercise. Therefore it was wholly improper for the Presenting Officer who appeared before the Judge to fail to produce the IS151A document at the hearing.
12. However the Judge well into error in her decisions. She has made contradictory findings in the two decisions. She had found that there was a sham marriage in Ms Vija's decision but did not use that finding in Mr Valente's decision, yet the evidence for both cases was the same. The Respondent's appeal therefore has to succeed.
13. There is also a material error of law in the decision in Ms Vija's case. The Judge was clearly concerned about the evidence contained within the Immigration Offices pocket notebooks. The Judge said at paragraph 16 of her decision in Ms Vija's case that she was not taking into account the "very intrusive line of questioning included in the Immigration Officer's notebook" as she thought it was inappropriate. However at paragraph 20 the Judge said that she *had* taken into account the evidence, *including* the evidence in the notebooks. It also appears from the findings made in respect of minutiae of the details that the matters raised in the notebook were used to come to adverse findings against Ms Vija.
14. Therefore there is a material error of law in the decision reached in respect of Ms Vija's appeal too. The Judge said she was not going to take into account the evidence in the notebooks of the Immigration Officers, yet proceeded to do so.
15. It is not possible for me to make a decision in respect of the appeal as evidence will have to be reheard. None of the findings of the Judge shall stand.

16. Ms Vija's appeal against the decision dismissing her appeal is allowed and the Secretary of State's appeal against the decision which had allowed Mr Valente's appeal is also allowed.

**Notice of Decision**

The decisions of the First tier Tribunal Judge involved the making of material errors of law and are both set aside.

The Appellants' appeals shall be reheard at the First Tier Tribunal.

No anonymity direction is made.

Signed

Date: 16 May 2016

Deputy Upper Tribunal Judge Mahmood