



**Upper Tribunal
(Immigration and Asylum Chamber)
EA/01823/2015**

Appeal Numbers:

HU/10822/2015

THE IMMIGRATION ACTS

Heard at Field House

**Decision & Reasons
Promulgated**

On 7 November 2017

On 22 November 2017

Before

DEPUTY UPPER TRIBUNAL JUDGE APLEYARD

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**ERROL SHELBY ARNOLD (FIRST RESPONDENT)
SHEREEN ALTHIA MALLETT (SECOND RESPONDENT)
(ANONYMITY DIRECTION NOT MADE)**

Respondents

Representation:

For the Appellant: Mr. S. Kotas, Home Office Presenting Officer.

For the Respondents: Mr. M. Clapham, Legal Representative.

DECISION AND REASONS

1. The appellant in this case is the Secretary of State for the Home Department. However, for the sake of clarity, I shall use the titles by which the parties were known before the First-tier Tribunal with the

Secretary of State referred to as “the respondent” and Mr Arnold and Miss Mallett as the first and second appellants.

2. The first appellant appealed against a decision by the respondent of 7 October 2016 to issue him with a residence card under the European Economic Area Regulations (EEA Regulations). He applied for the card which would have stated that he had a right of residence in the United Kingdom as the (now divorced) ex-partner or spouse of a person, namely one Ehuia Edith Aka, Italian or EU citizen who had claimed to be exercising treaty rights in the United Kingdom. The respondent maintained that the marriage had been a sham or a marriage of convenience.
3. The second appellant is the mother of the child of the first appellant. That child was born following a brief affair in 2009. In November 2017, the child will be 7 years of age. The second appellant claimed under human rights to be allowed to remain in the United Kingdom either in her own right under family life within Article 8 of the European Convention on Human Rights or in terms of family life where the child has contact with her father (the first appellant) and should be allowed to remain in order to facilitate that contact in the child’s best interest. The judge was referred to **Collins Agho [2015] EWCA Civ 1198** at paragraph 38.
4. The two appellants’ appeals were linked and heard at Taylor House by Judge of the First-tier Tribunal Telford who, in a decision promulgated on 17 August 2017, allowed them.
5. The respondent sought permission to appeal which was granted by Judge of the First-tier Tribunal J M Holmes on 12 September 2017. His reasons for so doing were:
 - (1) “In a decision promulgated on 17 August 2017 Judge Telford allowed the appellants’ appeals against the decision to refuse to issue A1 with a residence card, and to grant A2 leave to remain.
 - (2) The application is in time.
 - (3) Whilst the judge was no doubt not assisted by the failure of the respondent to attend the hearing it is arguable that this brief decision failed to properly engage with the evidence relied upon by the respondent, and failed to apply the correct burden and standard of proof; **Rosa [2016] EWCA Civ 14, Sadovska [2017] UKSC 54**. The decision does not refer to relevant jurisprudence”.
6. Thus, the appeal came before me today.
7. Mr Kotas accepted at the outset that contrary to the grant of permission to appeal the judge had referred to and adopted relevant jurisprudence as to how the issues in this appeal should be resolved. Moreover, the issues that the appellant’s marriage interview throughout did not “stand up” was resolved in light of the evidence and the judge’s findings. Irrespective

though of this he nonetheless sought to rely upon the respondent's grounds seeking permission to appeal.

8. Mr Clapham urged me to accept that the judge's decision disclosed no material error of law.
9. I agree with Mr Clapham's submissions. Relying on relevant authority the judge has applied the correct burden and standard of proof. He was entitled to come to the conclusions that he did having considered the evidence. They were open to be made. The decision discloses no arguable error of law. It is adequately reasoned and contrary to the asserted grounds the judge has not erred.

Notice of Decision

The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.

I do not set the decision aside.

No anonymity direction is made.

Signed

Date 21 November 2017.

Deputy Upper Tribunal Judge Appleyard