



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

Appeal Number: IA/24492/2015

**THE IMMIGRATION ACTS**

**Heard at Field House**

**On 12 June 2017**

**Decision &  
Promulgated  
On 23 June 2017**

**Reasons**

**Before**

**UPPER TRIBUNAL JUDGE McWILLIAM**

**Between**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

**and**

**MR MUHAMMAD BILAL  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

Respondent

**Representation:**

For the Appellant: Mr N Bramble, Home Office Presenting Officer  
For the Respondent: Mr E Waheed of Counsel instructed by Commonwealth Solicitors

**DECISION AND REASONS**

1. The Respondent is a citizen of Pakistan and his date of birth is 12 October 1986. I shall refer to him as “the Appellant” as he was before the First-tier Tribunal. He made an application for a residence card which was refused by the Secretary of State in a decision of 18 June 2015. The Secretary of State did not accept that his relationship with an EEA national, Ms Nebunu, was genuine and concluded that their marriage was one of convenience. It

was also not accepted that the EEA national was not exercising treaty rights.

2. The matter came before Judge of the First-tier Tribunal Miller on 28 September 2016 who allowed the appeal in a decision that was promulgated on 10 October 2016. The judge concluded that the marriage was not one of convenience. The Respondent was granted permission by Judge of the First-tier Tribunal Davies on 2 May 2017. The Secretary of State's grounds assert that the judge failed to make a finding in respect of whether or not the EEA national was exercising treaty rights and was therefore a qualified person as required under the 2006 EEA Regulations. Mr Waheed agreed at the hearing before me that the judge failed to make a finding in relation to this aspect of the appeal and that this amounts to an error of law.
3. There was before the First-tier Tribunal a letter at page 28 of the Appellant's bundle from Big News Ltd of 17 September 2006 which stated that the EEA national commenced employment with Big News Ltd on 1 September 2016. That was the only piece of evidence before the Judge of the First-tier Tribunal relating to the EEA national's employment at the date of the hearing. In Mr Bramble's submission this was not sufficient in order to discharge the burden of proof and in Mr Waheed's view the evidence was sufficient, and had it been taken into account the appeal would have been allowed by the First-tier Tribunal. I accept Mr Bramble's submission that the letter was insufficient, particularly in light of the significant gap in the EEA national's employment history. There was no evidence of bank statements or otherwise which would support the evidence of employment.
4. For the above reasons I conclude that the error is material and set aside the decision and go on to remake the decision.
5. Mr Bramble conceded that the evidence that had now been produced by the Appellant in relation to the EEA national established that at the date of the hearing before me that she was employed and therefore exercising treaty rights. The Appellant submitted evidence of bank statements. The evidence establishes that the EEA national has been in employment since January of this year. In the light of this I allow the appeal under the 2006 Regulations.
6. No anonymity direction is made.

Signed Joanna McWilliam

Date 22 June 2017

Upper Tribunal Judge McWilliam