



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

**Appeal Number: EA/04274/2016**

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 12 April 2018**

**Decision & Reason Promulgated  
On 18 April 2018**

**Before:**

**UPPER TRIBUNAL JUDGE GILL**

**Between**

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

Appellant

**And**

**AKWASI KYEI BAFFOUR-AGYEKUM  
(ANONYMITY ORDER NOT MADE)**

Respondent

**Representation:**

For the Appellant: Mr S Kotas, Senior Presenting Officer.

For the Respondent: Mr M West, of Counsel, instructed by Danbar Solicitors.

**DECISION AND REASONS**

**Introduction and background facts:**

1. The issue in this appeal is whether Judge of the First-tier Tribunal Majid materially erred in law in allowing the appeal of Mr Baffour-Agyekum (hereafter the “claimant”), a national of Ghana born on 11 May 1966, against a decision of the Secretary of State of 21 March 2016 to refuse to issue a residence card under the Immigration (European Economic Area) Regulations 2006 (hereafter the “EEA Regulations”) as the family member of a Ms Matilda Akpaloo (hereafter the “sponsor”), said to be an EEA national exercising Treaty rights in the United Kingdom.

2. The Secretary of State had refused to issue the residence card because she was satisfied that the marriage between the claimant and the sponsor was a marriage of convenience.
3. The grounds contend that the judge had failed to give adequate reasons and that the judge's decision mostly contained generic paragraphs that had no relevance to the case at all.
4. Mr West accepted that there the judge's decision does contain a legal error, in that, the reasoning was scant such that the reasons given were inadequate. However, he submitted, in summary, that the judge's overall conclusion was sustainable on the evidence that was before him. Mr West then proceeded to take me through the documents that were before the judge in detail. In his submission, the evidence was voluminous and conclusive. He asked me to note that, since the decision, a son has been born to the claimant and the sponsor, on 24 January 2017.
5. Mr West therefore invited me to re-make the decision in the claimant's favour.

### Assessment

6. In making my decision as to whether the judge had materially erred in law by giving reasons that are inadequate such as to amount to an error of law, as explained in R (Iran) [2005] EWCA Civ 982, I take into account the (unreported) decision of the Upper Tribunal (Mr C M G Ockelton, Vice President and UTJJ O/Connor and Smith) in MM v SSHD and others (appeal number AA/06906/2014), in which the Tribunal considered the decisions of the judge in 14 appeals. The Tribunal highlighted several errors in the 14 decisions such as to lead it to state at para 47 as follows:
  - “47. We regard the body of his work that we have examined in the course of these appeals as wholly failing to meet the standards that are demanded by the office of a judge and expected by the parties. As a result, every one of the decisions under appeal shows error of law, in most cases serious error, in most cases multiple serious errors. Whether the decisions are looked at together or separately, they show that nobody should assume that Judge Majid has an adequate knowledge of the law or of his task as a judge. If his decisions continue to have the features we have identified in the foregoing examination, they are clearly open to criticism.”
7. In my judgment, the judge's decision in the instant case shares a number of the same errors that were found in the 14 appeals in MM. By way of example only, I noted the following:
  - i. Para 1 refers to the decision being a refusal of leave to remain under the EEA Regulations. In fact, the decision was a refusal of a residence card. The judge did not apparently understand that leave to remain is not granted under the EEA Regulations.
  - ii. The first sentence of para 12, where the judge states that he has kept in mind *“the legal principle which allows him to deal with the EEA citizen leniently”* makes no sense. There is no such legal principle in relation to the issue that was before the judge, i.e. whether the marriage between the claimant and the sponsor was a marriage of convenience.
  - iii. At paras 14, 20, 21 and 23, the judge referred to the ECHR which has no relevance in this case.

- iv. None of the “*principles*” set out in the list of “*principles*” at para 15 are recognisable as legal principles. Furthermore, every single paragraph is irrelevant.
  - v. At para 22, the judge refers to Hansard as a guide to interpretation of legislation but does not explain what legislation he was interpreting, what he found in Hansard to assist him and how it helped him decide the issues in the case.
  - vi. Many of the remaining paragraphs are likewise irrelevant.
  - vii. In the concluding paragraph, the judge states that he was persuaded that the claimant comes within the relevant Immigration Rules and should have the benefit of discretion. However, there was no discretion to be exercised and the appeal was not brought under the Immigration Rules.
8. Mr West submitted that the judge's reasons at para 13 sustain his decision, in particular, what he identified as the “*knock -out reason*” for allowing the appeal, i.e. the fact that the marriage has resulted in the birth of a child in January 2017.
  9. In my judgment, a decision that falls so far below the standard demanded by the office of a judge as the decision in the instant case does, in the same way as was found by the Tribunal to be the case in the 14 appeals in MM, cannot be allowed to stand without undermining the reputation of the First-tier Tribunal.
  10. I am therefore satisfied that the decision of the judge is materially and fatally vitiated by error of law. I set it aside in its entirety.
  11. I therefore proceed to re-make the decision.
  12. In this respect, Mr Kotas informed me that he was content for me to re-make the decision by allowing the claimant's appeal against the Secretary of State's decision. In light of the claimant's evidence as contained in the bundle, he said that he could not see how the Secretary of State could discharge the burden of proof upon her to establish that the marriage was a marriage of convenience. This amounted to a concession on the Secretary of State's behalf that the claimant's appeal should be allowed.
  13. I therefore allow the claimant's appeal against the Secretary of State's decision under the EEA Regulations.

### **Decision**

Judge of the First-tier Tribunal Majid materially erred in law. His decision to allow the claimant's appeal is set aside in its entirety.

I re-make the claimant's decision on his appeal against the Secretary of State's decision by allowing it under the Immigration (European Economic Area) Regulations 2006.



Signed  
Upper Tribunal Judge Gill

Date: 16 April 2018