



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

Appeal Number: EA/01818/2017

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 16 January 2019**

**Decision and  
Promulgated  
On 18 February 2019**

**Reasons**

**Before**

**UPPER TRIBUNAL JUDGE CANAVAN**

**Between**

**COLLINS [E]**

(anonymity direction not made)

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mr D Balroop, Counsel

For the Respondent: Ms A Everett, Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant appealed the respondent's decision dated 06 February 2017 to refuse to issue a residence card recognising a right of residence as the family member of an EEA national with reference to The Immigration (European Economic Area) Regulations 2016.

2. First-tier Tribunal Judge Shore (“the judge”) dismissed the appeal in a decision promulgated on 03 May 2018.
3. The appellant appealed the First-tier Tribunal decision on the following grounds:
  - (i) The judge’s findings were perverse considering the evidence of cohabitation and the accepted fact that they have a child together.
  - (ii) The judge erred in making adverse credibility findings based on his own research after the hearing.
  - (iii) The judge failed to consider the evidence in the round, failed to give adequate reasons and took into account irrelevant considerations.

### **Decision and reasons**

#### *Error of law*

4. The main issue before the judge was whether the marriage was one of convenience contracted solely for immigration purposes. Although it was open to the judge to make various findings about the credibility of the witnesses, most of the credibility findings made at [66.1 - 66.12] related to matters that were relevant to whether the EEA sponsor was likely to be exercising treaty rights in the UK as a ‘qualified person’, rather than the core issue of whether this was likely to be a marriage of convenience. The only findings that touched on that issue were at [66.6-66.12].
5. The judge directed himself correctly to the relevant legal framework; then did not apply it. Having referred at [70] to a quote from *Tanveer Ahmed* [2002] UKAIT 00439 to remind himself that he should look at the evidence as a whole; he failed to do so. At [71] the judge used the adverse credibility findings he had already made to reject quite a significant body of evidence, including photographs, correspondence from official bodies and bills which indicated that the sponsor and the appellant lived together at the same address. The judge accepted that the couple have a child together and that this was a matter that supported the appellant’s case [72] but failed to explain what weight should be placed on this significant fact. The judge erred in rejecting significant parts of the evidence based on existing credibility findings rather than conducting a holistic assessment of the evidence before coming to his conclusions.
6. For these reasons I conclude that the decision involved the making of an error on a point of law and it should be set aside.

#### *Remaking*

7. It is not necessary to make detailed findings in remaking the appeal because Ms Everett accepted that the fact that there was a child of the relationship indicated that it may not have been a marriage of convenience solely for immigration purposes.
8. It was open to the respondent to express concerns about the relationship following the interview in 2015 and to rely on those concerns when the decision was made on 06 February 2017. Both events took place before the birth of their child. It is accepted that the couple have a child together. The documentary evidence is generally supportive of the appellant's claim to be living with his EEA spouse. A series of photographs show the couple with their child in a number of natural situations, including the birth of the child and the naming ceremony with family and friends. Most of the concerns that the judge had about the credibility of the witnesses related to the sponsor's work history. In respect of the only reason for refusal, which was whether this is likely to be a marriage of convenience, I am satisfied, despite some concerns about the consistency of their evidence, that the weight of the evidence shows that this is not a marriage of convenience.
9. I conclude that the decision to refuse a residence card breaches the appellant's rights under the EU Treaties in respect of entry to or residence in the United Kingdom.

## **DECISION**

The First-tier Tribunal decision involved the making of an error on a point of law

The decision is set aside

The decision is remade and the appeal is ALLOWED under the EEA Regulations 2016

Signed  Date 13 February 2019

Upper Tribunal Judge Canavan