



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/06471/2019

THE IMMIGRATION ACTS

Heard at Field House
On 3 September 2019

Decision & Reasons Promulgated
On 12 September 2019

Before

DEPUTY UPPER TRIBUNAL JUDGE MONSON

Between

RAYMOND [M]
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: No appearance
For the Respondent: Ms S. Jones, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant has been granted permission to appeal from the decision of First-Tier Tribunal Judge Powell who, in a decision promulgated on 21 June 2019, dismissed the appellant's "digital case" appeal against the decision to refuse to grant him leave to remain on the grounds of family and private life established in the UK.

2. One of the issues in the appeal was whether the appellant had entered into a genuine and subsisting same-sex marriage in the UK on 19 December 2017 with the consequence that there were insurmountable obstacles to married life with his same-sex partner being carried on his home country of Uganda.
3. The Judge held at [27] that the appellant had not provided any evidence in support of his appeal. Permission to appeal has been granted on the ground that it is arguable that the Judge failed to consider *“the letter of 1 November 2017 at p37 of the appellant’s bundle when concluding that the marriage was one of convenience, particularly given the fact that the decision letter indicated that the relationship eligibility requirements had been met.”*
4. The complaint advanced by the appellant goes wider than this. He pleads that the Judge has failed to consider the entirety of the bundle of documents that he says was delivered to the Tribunal on 11 June 2019.
5. At the hearing before me to determine whether an error of law was made out, Ms Jones conceded that the appellant’s bundle of documents had been filed with the Tribunal on 11 June 2019. There is a copy of the bundle in my file with a receipt date of 11 June 2019, and Ms Jones also had a copy of the bundle with the same receipt date.
6. I infer from the Judge’s line of reasoning that when he sat at Newport on 14 June 2019 he did not have in either digital or hard copy form the appellant’s bundle. Therefore he proceeded on the mistaken understanding that the appellant had failed to file any evidence in support of his appeal.
7. Accordingly, I am satisfied that the proceedings in the First-tier Tribunal were procedurally irregular. Through no fault of the Judge, the evidence filed by the appellant was not taken into consideration. Therefore the decision is vitiated by a material error of law, and must be set aside. As the appellant did not have a fair hearing in the First-tier Tribunal, his appeal is remitted to the First-tier Tribunal for a complete rehearing.

Notice of Decision

8. The decision of the First-tier Tribunal contained an error of law on procedural fairness grounds and accordingly the decision is set aside.

Directions

9. **The appeal is remitted to the First-tier Tribunal at Newport for a *de novo* hearing (Judge Powell not compatible)**

Signed

Date 10 September 2019

Deputy Upper Tribunal Judge Monson