

# Upper Tribunal (Immigration and Asylum Chamber)

# Appeal Number: EA/10324/2016

# THE IMMIGRATION ACTS

Heard at Field House On 1 June 2017

Decision & Reasons Promulgated On 5 June 2017

### **Before**

# **DEPUTY UPPER TRIBUNAL JUDGE HILL QC**

### Between

# MR IRFAN AHMED (ANONYMITY DIRECTION NOT MADE)

**Appellant** 

and

# THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

### Representation:

For the Appellant: Ms S Saifolahi, Counsel, instructed by ATM Law Solicitors

For the Respondent: Ms Z Ahmad, Home Office Presenting Officer

#### **DECISION AND REASONS**

- 1. This is an appeal from the decision of First-tier Tribunal Judge Birk promulgated on 18 November 2016. It relates to a refusal on the part of the respondent to grant a permanent residence card in relation to this appellant consequent upon his divorce from a Polish national.
- The decision is less than satisfactory, not helped by the fact that neither the appellant nor the respondent attended before the First-tier Tribunal or were represented. Although it seems from the opening paragraphs of the determination that the judge properly identified that the issue to be

determined turned upon the applicability or otherwise of Regulation 10(5) of the Immigration (European Economic Area) Regulations 2016, the judge uses the inaccurate terminology of "Immigration Rules" and in paragraph 12 adopts the language of "genuine and subsisting marriage", which is not the formulation to be applied.

- 3. There were a number of legitimate ways in which the judge might properly have dismissed the appeal. However, the construction and language of the determination make it impossible for the reader to know on what basis the judge saw fit to do so. There were factual issues to be determined relating to the duration of the marriage, the period during which both the appellant and his former spouse were resident in the United Kingdom and their work and remuneration at the relevant time.
- 4. The judge's mind was not directed in any cogent and satisfactory way to the provisions of Regulation 10(5) of the Immigration (European Economic Area) Regulations 2016 and I cannot be confident that the appeal received the anxious scrutiny which it undoubtedly deserved.
- 5. Put shortly, the parties have been denied a proper determination of the matter and the only course available to me is to set aside the decision of the First-tier Tribunal and to remit the matter to the First-tier Tribunal to be heard afresh.
- 6. There have been helpful discussions before me in relation to the evidence which ought to be before the First-tier Tribunal. I understand a bundle from the respondent only reached the judge after the determination had been promulgated. This bundle must be considered when the matter is redetermined. There are pages which have not photocopied well, making details obscure or illegible and, thanks to the productive conversations between counsel this morning, it has been agreed that the appellant's representatives will alert the respondent to those particular pages of the respondent's bundle which need to be re-copied and produced in a supplemental bundle.

# **Notice of Decision**

(1) The appeal is allowed and the decision of the First-tier Tribunal is set aside.

(2) The matter is remitted to the First-tier Tribunal to be heard afresh by a judge other than First-tier Tribunal Judge Birk.

No anonymity direction is made.

Signed Mark Hill Date 2 June 2017

Deputy Upper Tribunal Judge Hill QC