



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

Appeal Number: IA/33426/2013

THE IMMIGRATION ACTS

Heard at Manchester

On 11 June 2014

Determination

Promulgated

On 11 June 2014

Before

**Deputy Upper Tribunal Judge Pickup
Between**

**Fahad Gaffar
[No anonymity direction made]**

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:

For the appellant: No attendance

For the respondent: Ms C Johnstone, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant, Fahad Gaffar, date of birth 13.4.91, is a citizen of Pakistan.
2. This is his appeal against the determination of First-tier Tribunal Judge Foudy, who dismissed his appeal against the decision of the respondent, dated 23.7.13, to refuse his application for an EEA residence card. The judge dealt with the appeal on the papers on 21.1.14.
3. First-tier Tribunal Judge Hollingworth granted permission to appeal on 8.4.14.
4. Thus the matter came before me on 11.6.14 as an appeal in the Upper

Tribunal.

Error of Law

5. In the first instance I have to determine whether or not there was an error of law in the making of the decision of the First-tier Tribunal such that the determination of Judge Foudy should be set aside.
6. The relevant background can be summarised as follows. The appellant claims to have first entered the UK on 23.8.11 with leave as a student. His leave was curtailed on 1.11.12, so that he had no extant leave. The application for an EEA residence card was made on 27.12.12, on the basis of the appellant's marriage to a Portuguese national. The application was refused because the Secretary of State was not satisfied on the evidence submitted that the spouse was a qualified person as defined in the Immigration (EEA) Regulations 2006. The appellant had to demonstrate that her Portuguese spouse was exercising Treaty rights in the UK. Whilst there was evidence of a wage slip and an employer's letter for employment in December 2012, checked made by the respondent suggested that she had only worked a month before leaving on maternity leave in January 2013 with no indication that she would be returning to work. The appellant and his spouse also failed to attend two pre-arranged marriage interviews, intended to confirm the relationship. In the circumstances, the Secretary of State was not satisfied that the spouse was exercising Treaty rights and thus the application was refused on 23.7.13.
7. The grounds of appeal contained in the Notice of Appeal were no more than generic grounds of law and provided no evidence that the spouse was exercising Treaty rights.
8. The appeal had originally been listed in the First-tier Tribunal for an oral hearing on 6.12.13, with notification sent out on 23.10.13. This notice directed the appellant to send to the Tribunal and to the respondent no later than 5 days before the date of the hearing a bundle of all documents to be relied on at the hearing. No such bundle was ever sent. However, by letter dated 26.11.13 the appellant's representatives asked for the oral appeal to be instead determined on the papers and asked to be notified of the hearing date for the paper hearing. In response the Tribunal sent out a notice of adjourned hearing, dated 2.12.13. This notice stated that a new notice of hearing will follow in due course. On 5.12.13 the representatives sought a refund of the fees paid for the oral hearing. There was no reference in the representative's correspondence to any bundle to be submitted on behalf of the appellant.
9. The paper appeal was put before Judge Foudy on 21.1.14 and the determination promulgated on 3.2.14. In determining the appeal on the papers, Judge Foudy noted that there was no appellant's bundle of evidence and thus the judge had no more information than was present in the respondent's bundle and submitted by the appellant with the application. In the absence of sufficient evidence the judge was not satisfied that the EEA national spouse was exercising Treaty rights. Neither was there evidence to substantiate the vague EEA article 8 claim in

relation to private and family life. In the circumstances, the appeal was dismissed.

10. An email dated 5.2.14 complained that the representatives had called the Tribunal on numerous occasions to enquire about the new notice of hearing to be issued "as we had the full appeal bundle ready for submissions. However, we were always told that the matter had not been listed and we would receive a new Notice of hearing once listed." However, no notice of hearing is sent out for a paper appeal, as there is no hearing date. The directions had required the appellant to submit a bundle of the evidence he wished to rely on prior to the hearing. There is no reason why the appellant's representatives could not have submitted that bundle; they did not need to wait for a notice of hearing to do so. It is claimed that the appellant's bundle was prepared in December 2013 and was ready for submission. On 5.2.14 the appellant submitted an application for permission to appeal to the Upper Tribunal.
11. In granting permission to appeal, Judge Hollingworth found there was an arguable error of law. "The judge was not in possession of the appellant's bundle. The case was determined on the papers. A full explanation has been provided for the absence of the appellant's bundle by reference to what took place. In the circumstances the judge was unable to consider the appellant's case."
12. The Secretary of State's Rule 24 response, dated 30.4.14, opposes the appeal on the basis that there is no evidence to substantiate the allegation of procedural irregularity.
13. Once permission had been granted to appeal to the Upper Tribunal, on 16.4.14 that decision was notified to the appellant at his home address and to the appellant's representatives, the same firm acting from the outset, Arshed & Co of an address in Manchester. Their response, dated 15.5.14 was to the effect that they are no longer instructed in the matter. All further correspondence from the Tribunal has been sent to the appellant at the address in Manchester given in his applications and correspondence. Notice of the hearing listed before me on 11.6.14 was sent to the appellant at that address by first class post on 2.5.14.
14. The directions accompanying the notice that permission had been granted to appeal to the Upper Tribunal directed the appellant to serve on the Upper Tribunal and the respondent, not later than 21 days after the directions, all documentary evidence it is intended to rely on at the forthcoming hearing. There has been no response from the appellant to those directions and no evidence has been submitted.
15. Whilst there may have been a procedural error in the Tribunal's communication with the appellant's representative, failing to notify that the case is to be determined on the papers and to invite submission of a bundle, I am satisfied on the chronology set out above that it was not material to the outcome of the appeal as the appellant has even now failed to submit any appellant's bundle, despite the directions of the Tribunal to do so for the Upper Tribunal appeal. The appellant did not respond to the notice of hearing for today's date and has submitted no further documentation.
16. In the circumstances, the Upper Tribunal is in the exact same evidential position as when Judge Foudy came to determine the appeal on the papers. There remains no satisfactory evidence that the appellant's

spouse was or is a qualified person as defined in the Regulations.

Conclusions:

17. The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law such that the decision should be set aside.

I do not set aside the decision.

The decision of the First-tier Tribunal stands and the appeal remains dismissed.



Signed:

Date: 11 June 2014

Deputy Upper Tribunal Judge Pickup

Anonymity

I have considered whether any parties require the protection of any anonymity direction. No submissions were made on the issue. The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

Given the circumstances, I make no anonymity order.

Fee Award

Note: this is not part of the determination.

In the light of my decision, I have considered whether to make a fee award (rule 23A (costs) of the Asylum and Immigration Tribunal (Procedure) Rules 2005 and section 12(4)(a) of the Tribunals, Courts and Enforcement Act 2007).

I have had regard to the Joint Presidential Guidance Note: Fee Awards in Immigration Appeals (December 2011).

I make no fee award.

Reasons: The decision of the First-tier Tribunal stands and the appeal remains

A handwritten signature in black ink, appearing to be 'J. Marshall'.

dismissed. Signed:

Date: 11 June 2014

Deputy Upper Tribunal Judge Pickup