



IAC

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

Appeal Number: IA/20917/2014

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 27 October 2015**

**Decision & Reasons Promulgated  
On 29 October 2015**

**Before**

**DEPUTY JUDGE OF THE UPPER TRIBUNAL HUTCHINSON**

**Between**

**MR SARBJEET SINGH  
(NO ANONYMITY DIRECTION)**

Appellant

**and**

**SECRETARY OF STATE**

Respondent

**Representation:**

For the Appellant: Mr W. Malik, Counsel, instructed by M & S Solicitors  
For the Respondent: Mr Whitwell Senior Home Office Presenting Officer

**NOTICE**

1. Mr Singh appealed against the refusal of the respondent to issue the first appellant with an EEA residence card as confirmation that he is the family member of an EEA national exercising treaty rights.
2. The respondent refused the appellant's application for an EEA residence card on 1 May 2014. The appellant appealed against that decision. His appeal before the First-tier Tribunal was joined with that of Rita Szabo, with whom he claimed to be in a durable relationship. Ms Szabo had appealed against removal directions as the respondent

was of the opinion that Ms Szabo was a party to an intended marriage of convenience with Mr Singh.

3. On 26 November 2014 Judge of the First-tier Tribunal Kinnell heard both appeals. The appeal of Ms Szabo was allowed as Judge Kinnell was not satisfied that the respondent had demonstrated that there was reasonable suspicion that the intended marriage was one of convenience. The judge purported to dismiss the appeal of Mr Singh as the judge was not satisfied that the evidence demonstrated on a balance of probabilities that Mr Singh was in a durable relationship with Ms Szabo.
4. Permission to appeal to the Upper Tribunal in relation to Mr Singh was granted on 29 May 2015 on the basis that there was an arguable question of jurisdiction given that the respondent's decision of 1 May 2014 arguably did not give rise to a right of appeal. Alternatively it was indicated that there was arguable merit in the assertion in the grounds that the correct course, having made the findings that the judge did as to the respondent not having proved that the marriage was one of convenience, was for the judge to refer the matter back to the respondent for a decision to be taken under Regulation 17 of the EEA Regulations.

#### Jurisdiction

5. The matter came before me. I considered the issue of jurisdiction. The respondent in the refusal letter dated 1 October 2014 stated that as the appellant's entitlement to rely on the provisions of the Immigration (European Economic Area) Regulations 2006 could not be established there was no right of appeal against the decision.
6. Although the appellant's grounds of appeal made submissions on this issue it does not appear to have been addressed by the First-tier Tribunal.
7. Mr Whitwell adopted the Rule 24 response and submitted that the refusal letter clearly set out that Mr Singh had no right of appeal as his 'entitlement to rely on the provisions of the Immigration (European Economic Area) Regulations 2006 (the 2006 Regulations) cannot be established there is no right of appeal against this decision'.
8. The relevant Regulation is 26(2A) of the 2006 Regulations which provides:  

'If a person claims to be in a durable relationship with an EEA national, he may not appeal under these Regulations unless he produces -

  - (a) a passport; and
  - (b) either-

- (i) an EEA family permit; or
  - (ii) sufficient evidence to satisfy the Secretary of State that he is in a relationship with that EEA national'
9. Mr Whitwell conceded that the appellant's passport had been produced. In relation to Regulation 26(2A)(b)(ii) Mr Malik referred to the original EEA application and argued that there was sufficient evidence to satisfy the Secretary of State that he was in a relationship, to the extent that the appellant had a valid right of appeal. It was argued that this was over forty pages of documents. However in the large part these were documents relating to either the appellant or Ms Szabo. Although there were 3 pages of photographs and a number of documents were addressed separately to the appellant and Ms Szabo at the same address, I am not satisfied that this when considered in the round was sufficient evidence to satisfy the Secretary of State that the appellant was in a relationship.
10. Although Mr Malik conceded that there was more information provided on appeal and indicated that the appellant had been bailed to live with his partner, this was not information produced to the respondent for the purposes of the 1 May 2014 decision.
11. I am not satisfied that any discretion open to the respondent ought to have been exercised differently. I am satisfied that the appellant had no valid right of appeal against the 1 May 2014.
12. In respect of Mr Singh there was no valid appeal before either the First-tier Tribunal or the Upper Tribunal. I cannot therefore go on to consider the substantive grounds of appeal. The grounds were also substantive merit as although the judge found that the respondent had not demonstrated the intended marriage was one of convenience, the judge made detailed findings indicating that the parties were not in a durable relationship under Regulation 8(5) of the 2006 Regulations. There was in these circumstances no requirement to remit the case back to the respondent for a decision under Regulation 17, given those comprehensive findings. In any event, such is academic given the lack of jurisdiction.
13. Although Mr Malik raised before me that an FLR(O) application was still outstanding with the respondent, that is not a matter for the Tribunal. As Mr Whitwell indicated the correct course of action for Mr Singh, if he wishes to pursue the matter, is to make a fresh application to the respondent.

#### Decision

14. No valid right of appeal.

Signed

Date: 27 October 2015

M. M. Hutchinson  
Deputy Judge of the Upper Tribunal